

PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the El Segundo)	00-AFC-14
Modernization Project)	
_____)	

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TUESDAY, JANUARY 7, 2003

10:03 a.m.

Reported by:
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert Pernell, Presiding Member

HEARING OFFICER AND ADVISORS

Garret Shean, Hearing Officer

Michael Smith, Advisor Chairman Keese

E.V. "AL" Garcia, Advisor to Commissioner Pernell

STAFF AND CONSULTANTS PRESENT

David Abelson, Senior Staff Counsel

James W. Reede, Jr., Project Manager

Joe Loyer

Eric Knight

Michael Fajans

James Bunton
Brown, Bunton Associates

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

John McKinsey, Attorney,
Kimberly J. Hellwig, Energy Regulatory Analyst
Livingston and Mattesich

Ron Cabe, Project Manager
El Segundo Power II LLC
NRG Energy, Inc.

Tim E. Hemig, Manager, Environmental Services
NRG Energy, Inc.

INTERVENORS

Richard G. "Nick" Nickelson

Paul Garry
City of El Segundo

Bob Perkins
Murphy/Perkins

Steve Fleischli, Executive Director
Santa Monica Bay Keeper
Heal The Bay

ALSO PRESENT

Laurie Jester
Robert V. Wadden, Jr., City Attorney
City of Manhattan Beach

Charles B. Turhollow
Department of Public Works
City of Los Angeles

Tom Luster
California Coastal Commission

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P R O C E E D I N G S

10:03 a.m.

PRESIDING MEMBER PERNELL: Good morning.

Hope everyone had a safe and happy holiday season.

My name is Commissioner Pernell. I'm the

Presiding Commissioner on the El Segundo Power

Project. Commissioner Keese is the Associate

Member who couldn't be here today.

To my right is my Advisor, Al Garcia.

To my left is our Hearing Officer, Garret Shean.

And to his left is Commissioner Keese's Advisor,

Mike Smith.

The purpose of the prehearing conference

is to assess the parties' readiness to go forward

with the evidentiary hearings, to provide

Committee direction and scheduling for these

hearings.

In early November last year we conducted

a prehearing conference which established a

lengthy list of uncontested topics. The Committee

also directed the parties to prepare status

reports during December to aid in establishing a

final list of agreed-to conditions, which the

Commission Staff has compiled and sent to all

parties.

1 The staff also conducted a workshop on
2 December 18th to address aquatic biology and
3 visual impact issues. There were a handful of
4 contested topics remaining from the last
5 prehearing conference that we will address today.

6 The Committee has reserved tentative
7 evidentiary hearing dates in our schedules. And
8 they are January 27th, 28th and 29th, here in El
9 Segundo.

10 At this time I'd like to introduce also
11 our Hearing Adviser, Public Adviser, Roberta.
12 Roberta, please stand and raise your hand. If
13 anybody from the public has any questions, Roberta
14 will entertain those, as well as anyone on the
15 phone.

16 At this time I'd like the parties to
17 introduce themselves starting with the applicant
18 and I will then turn it over to our Hearing
19 Officer, Mr. Shean, after introductions.

20 MR. MCKINSEY: Thank you, Commissioner
21 Pernell. My name is John McKinsey; I'm the
22 counsel for the project applicant El Segundo Power
23 II.

24 To my left is Mr. Ron Cabe from El
25 Segundo Power II, LLC. And to my right is Tim

1 Hemig from NRG Energy, Incorporated.

2 PRESIDING MEMBER PERNELL: Thank you.
3 Staff.

4 MR. ABELSON: Yes, good morning,
5 Commissioner. My name is David Abelson; I'm staff
6 counsel for this proceeding. To my left is the
7 project manager for the El Segundo case, Mr. James
8 Reede.

9 We have staff members in the audience
10 available, if necessary, on particular topics.
11 And I'll reserve introductions at this time.

12 PRESIDING MEMBER PERNELL: All right.
13 Intervenors.

14 MR. GARRY: Paul Garry, City of El
15 Segundo, intervenor.

16 MR. PERKINS: I'm Bob Perkins,
17 intervenor. I should explain my wife, Michelle
18 Murphy, is also an intervenor. She's nursing an
19 aunt with emphysema in Wisconsin and will be back
20 by the 27th, but can't attend today.

21 MR. NICKELSON: Richard Nickelson; I'm
22 an intervenor from Manhattan Beach.

23 PRESIDING MEMBER PERNELL: Any other
24 intervenors? Are there any public agencies
25 represented this morning? Would you come forward

1 and state your name and your agency, please.

2 MR. TURHOLLOW: Good morning, my name is
3 Chuck Turhollow representing the Bureau of
4 Sanitation, Department of Public Works, City of
5 Los Angeles.

6 PRESIDING MEMBER PERNELL: Thank you.
7 Any other public agencies?

8 MS. JESTER: City of Manhattan Beach --

9 PRESIDING MEMBER PERNELL: Would you
10 come forward, please.

11 MS. JESTER: City of Manhattan Beach,
12 Laurie Jester and Bob Wadden.

13 PRESIDING MEMBER PERNELL: Good morning,
14 welcome.

15 MS. JESTER: Good morning.

16 PRESIDING MEMBER PERNELL: Is there
17 anyone representing community-based organizations
18 or any other organization, please step forward.

19 MR. FLEISCHLI: Steve Fleischli
20 representing Santa Monica BayKeeper and Heal The
21 Bay. We've also proposed to be intervenors in the
22 matter. Thank you.

23 PRESIDING MEMBER PERNELL: Thank you.
24 Welcome. Can I ask the people who are on the
25 phone to state your name and organization is you

1 haven't already done so.

2 MR. BUNTON: I'm Jim Bunton with Brown,
3 Bunton Associates, working on noise for Energy
4 Commission Staff.

5 PRESIDING MEMBER PERNELL: Thank you.

6 MR. KNIGHT: Eric Knight, Energy
7 Commission Staff, visual resources.

8 PRESIDING MEMBER PERNELL: Thank you.

9 MR. FAJANS: Michael Fajans, Gabriel
10 Rochet, socioeconomics.

11 PRESIDING MEMBER PERNELL: Is that
12 Energy Commission Staff?

13 MR. LUSTER: Tom Luster, California
14 Coastal Commission. Also, I'm able to hear you
15 quite well, Commissioner Pernell, but am not able
16 to hear the other parties.

17 PRESIDING MEMBER PERNELL: All right, we
18 would ask that everyone in the audience please
19 speak up so that the participants on the phone can
20 hear you. You can hear me because the phone is
21 right next to me and I'm loud anyway.

22 All right, at this time I'd like to turn
23 the hearing over to our Hearing Officer Mr. Shean.

24 HEARING OFFICER SHEAN: Good morning.
25 What we are going to do is go through the topics

1 listed in appendix A for the notice of this
2 particular prehearing conference. But before we
3 do that we have a pending petition to intervene
4 from the Santa Monica BayKeeper and Heal The Bay.
5 In addition to the petition to intervene, they
6 accompanied that with a prehearing conference
7 statement.

8 If any party has any comment on this
9 before the Committee disposition, let's hear it
10 now.

11 All right. The Committee intends to
12 grant you petition to intervene. Given the
13 relative lateness of that, and the nature of the
14 issues that we're dealing with, I think it's going
15 to be possible to assure your full participation.
16 And I think you'll just see that develop as we go
17 forward.

18 What I intend to do next is essentially
19 go through this list. People should understand,
20 our basic objectives here are twofold. Number one
21 is determine the readiness of the parties to go
22 forward. And if it appears that the parties are
23 substantially ready and the issues are ready to be
24 heard and the Committee is capable of proceeding
25 with the evidentiary hearings, we will do that.

1 And that leads us to the second purpose
2 today, is to attempt to schedule not only the
3 dates, but also the manner of presentation so that
4 we're assured not only that all issues are covered
5 so that we have a complete and adequate record,
6 but we've also provided all the parties with a
7 meaningful opportunity to be heard.

8 So with that, let's just -- one
9 preliminary item. As a result of the Committee's
10 last prehearing conference order the staff had
11 conducted a workshop. And in accordance with the
12 order, also published or republished agreed-to
13 conditions of certification which are contained in
14 documents dated December 13th and December 31.

15 Let me just indicate the Committee has
16 reviewed all of those. The Committee has also
17 reviewed the prehearing conference statements from
18 the Commission Staff, the applicant, Mr. Murphy or
19 Murphy/Perkins and the City of El Segundo, and
20 obviously also the BayKeeper petition to
21 intervene. So those are the documents we're
22 basically working from.

23 MR. REEDE: Excuse me, Hearing Officer
24 Shean. There was also a document docketed
25 yesterday by Energy Commission Staff that related

1 to two land use conditions. It was titled, second
2 response to comments and errata to the final staff
3 assessment, land use. Was docketed both
4 electronically and hard copy, in which we
5 addressed land use condition 4 and land use
6 condition 9.

7 Land use condition 4 was offsite parking
8 and staging areas. And land use condition 9,
9 which was incorrectly submitted as agreed-to
10 condition with the wrong condition in there, is
11 now corrected by this document.

12 PRESIDING MEMBER PERNELL: Do all the
13 parties have a copy of the document that Mr. Reede
14 is referring to?

15 MR. McKINSEY: This is John McKinsey
16 with applicant. We do.

17 MR. REEDE: I do have additional copies.

18 PRESIDING MEMBER PERNELL: Could you
19 pass out those that --

20 MR. REEDE: I only have two.

21 (Pause.)

22 PRESIDING MEMBER PERNELL: The Hearing
23 Officer will be making additional copies for those
24 who are interested in that document.

25 MR. REEDE: It was dated January 6th.

1 City of Manhattan Beach says they have it.

2 MS. JESTER: I didn't see anything on 4,
3 though, in here. It has response to El Segundo's
4 comments. And then it has a land 2 --

5 MR. REEDE: Oh, I'm sorry, it's now land
6 use 2 -- it's land use 2, I apologize.

7 MS. JESTER: -- and 11 -- okay.

8 MR. REEDE: And that was part of the
9 confusion because we had been ordered to combine
10 land use 1, 2 and 3, which changed the numbering,
11 which confused the issues considerably. But
12 they're straightened out at this point.

13 PRESIDING MEMBER PERNELL: All right,
14 for the record we're talking about land use 2, is
15 that correct?

16 MR. REEDE: Yes, land use 2 and land use
17 9.

18 PRESIDING MEMBER PERNELL: All right,
19 Mr. Shean.

20 MS. JESTER: Hearing Officer Shean, you
21 should have also received a statement from the
22 City of Manhattan Beach.

23 MR. REEDE: We have not received --

24 HEARING OFFICER SHEAN: I did not
25 receive anything.

1 MS. JESTER: It was docketed twice on
2 Friday. I received it twice, anyway. I don't
3 have extra --

4 PRESIDING MEMBER PERNELL: Do you have a
5 copy of it now?

6 MS. JESTER: I have one copy.

7 MR. REEDE: I did not receive one.

8 MR. GARCIA: Is that the one with the
9 letterhead or --

10 PRESIDING MEMBER PERNELL: Would you
11 identify the document, just read the title and
12 date.

13 MS. JESTER: State of California, State
14 Energy Resources Conservation and Development
15 Commission, in the matter of El Segundo Power
16 Redevelopment Project Prehearing Conference
17 Statement of Intervenor City of Manhattan Beach,
18 docket number --

19 MR. REEDE: Yeah, I never received it.

20 (Pause.)

21 PRESIDING MEMBER PERNELL: Mr. Reede, do
22 you have a copy now?

23 MR. REEDE: Yes, Mr. Perkins was kind
24 enough to loan me his.

25 HEARING OFFICER SHEAN: Okay,

1 fortunately my notes pretty much concur with --
2 from the prior event, concur with this. Okay.
3 Why don't we launch into noise here. And we last
4 had it the parties, City of Manhattan Beach and
5 Murphy/Perkins would either make an affirmative
6 presentation or cross-examine witnesses from
7 another party. Is that still the case?

8 MR. PERKINS: Speaking for Murphy and
9 Perkins, I think that the staff's workshops and
10 their efforts to get jointly agreed-on noise
11 conditions have succeeded. I think we have agreed
12 upon noise conditions and no need for affirmative
13 presentations.

14 HEARING OFFICER SHEAN: And from the
15 City of Manhattan Beach.

16 PRESIDING MEMBER PERNELL: Thank you.

17 MS. JESTER: Noise is fine, thank you
18 for working with us on all those issues. We
19 really appreciate it.

20 HEARING OFFICER SHEAN: And we think we
21 have --

22 PRESIDING MEMBER PERNELL: Thank you.

23 HEARING OFFICER SHEAN: -- thanks --
24 sufficient information on that to reflect whatever
25 new language there is for that. I'm just

1 wondering whether as an expositional exercise we
2 should have either the applicant or the staff give
3 us the background on what has been agreed to and
4 what underlays the noise conditions.

5 MR. ABELSON: If I could just address
6 that briefly. I think that on this topic, as were
7 a number of the topics that have been agreed upon
8 recently, it's important for the evidentiary
9 record to be clear as to the basis for the
10 conditions.

11 The conditions apparently, reinforced by
12 what was just said, are agreed to. But there's
13 been discussion over time and there have been
14 commitments made over time, and it would be
15 staff's position that the Committee would be well
16 served to have the applicant, if they're so
17 inclined to do so, to simply summarize in brief
18 form what the understanding is, and then reflect
19 the condition that we're all agreeing on would be
20 our anticipation on staff's behalf, that if that
21 was accurate from our perspective, we would simply
22 so stipulate. And then the Committee would have
23 the record for that issue.

24 HEARING OFFICER SHEAN: I think the
25 feeling of the Committee is that this is a matter

1 of sufficient concern to the local public that
2 during that portion of the evidentiary hearing --
3 trying to assure there will be post work evening
4 access to this process that at least on noise and
5 visual and some others, that the members of the
6 community have an opportunity to come hear what is
7 going on on their behalf with respect particularly
8 to noise and visual.

9 So I think what we'll do is ask the
10 applicant to make a presentation on noise that
11 will sufficiently reflect the basic, you know, the
12 activities that are being undertaken by the
13 applicant to insure that there are no significant
14 noise impacts.

15 MR. MCKINSEY: Thank you, Hearing
16 Officer Shean. The noise conditions that are
17 published in the agreed-to conditions dated
18 December 13th by the staff should reflect what we
19 worked out in terms of various issues which I will
20 summarize briefly.

21 The one concern that was raised had to
22 do with, in fact really in about 80 percent of the
23 noise conditions the way they appeared in the
24 final staff assessment, there was a party that had
25 an issue with some component of them.

1 And we exchanged, over a period of about
2 three weeks, following the prehearing conference,
3 maybe four weeks, a series of emails amongst the
4 parties in which we said, here's the proposal,
5 here's the proposal, does that address your issue
6 in this area.

7 The end result we then circulated again
8 saying this looks like the conditions that we're
9 all comfortable with. And we submitted that to
10 the CEC Staff, as well; recommended that they
11 incorporate these into the agreed-to conditions.
12 And they did.

13 A couple of the issues that were of
14 particular concern in terms of potential impacts
15 to the local community involved low pressure blow,
16 which is a one-time event that has to occur when
17 you're done constructing a steam system to clean
18 it out.

19 And there was a lot of concern over how
20 loud that would be, when it would occur, and
21 whether it would disturb the local community. And
22 that was on VIS-5, I believe -- no, I'm sorry, on
23 Noise-4. And we proposed some language that
24 finally worked itself out to address that issue.

25 Another particular noise concern had to

1 do with the -- turn to it very quickly --

2 HEARING OFFICER SHEAN: Let me just stop
3 you, because I think we understand what that is.
4 I think all we're suggesting is for a public
5 expositional purpose, which underlies the Warren
6 Alquist Act, is that we have someone from the
7 applicant come and fundamentally explain what
8 you're explaining in a public setting so that if
9 there are questions of the public that evening or
10 some other thing like that, they can have
11 explained to them what was done, the process that
12 was undertaken and why certain conditions seem to
13 be adequate for the purpose of assuring no
14 significant impact.

15 MR. McKINSEY: Are you suggesting
16 perhaps that we just have somebody make a
17 presentation on the noise conditions --

18 HEARING OFFICER SHEAN: Correct.

19 MR. McKINSEY: -- rather than just
20 submitting them in written form in the evidentiary
21 hearings, but actually --

22 HEARING OFFICER SHEAN: Right, --

23 MR. McKINSEY: -- walk through the --

24 HEARING OFFICER SHEAN: -- someone who's
25 available to explain what El Segundo II is going

1 to do to insure that -- and how they're reflected
2 in the conditions.

3 MR. MCKINSEY: Okay. And I would like
4 to say that when you heard other parties
5 indicating, and this is what I want to make sure
6 we're all on the same page on, I think it's really
7 important, that what I think I'm confident is that
8 the noise conditions as they appear in the agreed-
9 to conditions are the accurate and true conditions
10 that the parties have said they're happy with.

11 Unless there's some other point out
12 there, or anything that was missed. And part of
13 the point of publishing the agreed-to conditions
14 was when now they're in the record, was to see if
15 we got them right. If the staff published them
16 the way all the parties thought they would. And
17 what I think we just heard was they got them
18 right.

19 HEARING OFFICER SHEAN: That's correct.

20 MR. MCKINSEY: That I want to make sure.

21 HEARING OFFICER SHEAN: Yes.

22 MS. JESTER: That's correct.

23 MR. PERKINS: That's my understanding.

24 You're talking about the latest version, not the
25 earlier versions of the agreed-to conditions.

1 Yeah, I think that's --

2 MR. ABELSON: Adviser Shean, before we
3 move off of that topic I would just like to
4 restate our recommendation from staff's
5 perspective, which is that we're fully supportive,
6 if the Committee thinks it's important, for there
7 to be a public statement about it at the time of
8 the hearing, because of the public interest in the
9 topic.

10 But, again, for purposes of efficiency
11 and just making sure that we're all on the same
12 page, we would like to ask that the Committee
13 direct the applicant, would be our suggestion, but
14 direct the applicant to, in effect, prepare a
15 short summary in writing prior to the hearing that
16 basically captures the points they want to make at
17 that time.

18 That way hopefully we can use the
19 hearing time very efficiently to simply re-
20 summarize that orally. And if there's no
21 disagreement about it, we can move on to other
22 topics.

23 HEARING OFFICER SHEAN: Yes, I think it
24 should be understood that we start from the
25 following rule, which is that for the applicant to

1 be granted certification, the record, whether it's
2 a presentation by the applicant or some other
3 party, must be there sufficiently to support all
4 the necessary findings.

5 That basically leaves it fundamentally
6 up to the applicant to make sure all the t's are
7 crossed and i's are dotted. So we'll --

8 MR. MCKINSEY: I'd even suggest what the
9 term might be is that we might submit a written
10 narrative that summarizes how we dealt with the
11 issues that were raised. And then just reinforce
12 that at the evidentiary hearings.

13 HEARING OFFICER SHEAN: That's fine. So
14 we're going to show this as uncontested, but with
15 a narrative type presentation to the public.

16 All right. We have a minor issue here
17 in biology.

18 (Laughter.)

19 HEARING OFFICER SHEAN: Why don't we go
20 forward first with the applicant as far as what
21 you have proposed as conditions, and how you want
22 to address this.

23 MR. MCKINSEY: In our prehearing
24 conference we proposed four conditions of
25 certification that are similar to, but actually

1 also different, to the conditions that we
2 circulated at the time of the first prehearing
3 conference.

4 And we explain in our prehearing
5 conference, based on the feedback we received from
6 parties, that this was probably going to be our
7 best effort at trying to provide something that
8 would be satisfying to as many of the parties as
9 possible.

10 The major adjustments that we made, from
11 what we originally proposed, was that we removed
12 the idea that we would try to fund a game warden
13 for the Department of Fish and Game.

14 What we got from the workshop on
15 December 18th was that that just probably wasn't
16 going to work. We already were facing a lot of
17 strategic issues with the Department of Fish and
18 Game, and the Department of Fish and Game
19 representative that came to the workshop, itself,
20 thought that it would just never really fly.

21 Also we had heard a lot of parties
22 suggest other ways that that same money might be
23 better spent, and we took that to heart. And that
24 led to a proposal instead that we fund \$1 million
25 to the Santa Monica Bay Restoration Project, such

1 that that money could be used in a variety of
2 ways.

3 There was really essentially another
4 idea; and another idea was that we might fund a
5 study of entrainment in the Santa Monica Bay.

6 The reason why we chose this path is
7 one, because it's still possible for that money to
8 end up doing that. But we thought that the Santa
9 Monica Bay has an entity that is focused on trying
10 to evaluate and maintain and improve the health of
11 the Santa Monica Bay and preserve it. And they
12 would be the best entity.

13 And they have a technical committee, in
14 fact, that can pretty much evaluate how to best
15 utilize the funds. And so by putting it in the
16 hands of the Santa Monica Bay restoration fund we
17 kind of felt that's the most effective way for us
18 to make a contribution to the community that would
19 reach out to as many of the parties and other
20 people we've heard in this process.

21 The other change that we made was that
22 we finalized what we're proposing as the numbers
23 for a flow cap. That condition that has a flow
24 cap has been -- it's been controversial, but it's
25 also, I think the December 18th workshop was very

1 helpful in helping everybody understand what we
2 were proposing.

3 And the fundamental difference that
4 exists is that we're not proposing it as
5 mitigation; we're proposing it as an enhancement.
6 And what we're really trying to do is offer up a
7 proposed condition of certification that the
8 Committee could consider. And if other parties
9 feel that it's appropriate, they could also
10 endorse that. Or they could also oppose it.

11 There's still an underlying complete
12 difference of agreement under whether or not our
13 data is adequate to actually evaluate whether or
14 not this project will cause significant impacts
15 through entrainment.

16 And the purpose of the flow cap, as we
17 mentioned last month, was to try to address the
18 most conservative position that's been taken by a
19 party in the proceeding, which was that this
20 project is causing an incremental or marginal flow
21 increase. And that flow increase thus triggers an
22 impact. And your data is not good enough to
23 figure out what that impact is, and whether or not
24 it's significant.

25 And what we proposed was we disagreed

1 with that conclusion regarding the data, but we
2 said there's a way we might be able to get around
3 this if we can agree not to cause a flow increase.

4 And so by proposing this flow cap, our
5 point was to try to offer up something that may
6 resolve the issue from other parties'
7 perspectives. Or may make it more feasible for
8 the Committee to consider in terms of possible
9 solutions.

10 We revised that condition in our
11 prehearing conference statement slightly to focus
12 on the flow cap. There was a lot of issues with
13 the idea that it would -- that somehow the
14 Commission might be ordering a condition that
15 could allow the installation of Gunderboom without
16 a lot more consideration and study.

17 Now, that wasn't our intent in the
18 condition. Our intent in the condition was to
19 make that another possible alternative. And
20 that's still in there, but now it's in there more
21 as a discussion of if alternative technologies
22 emerged through the L.A. Regional Water Quality
23 Control Board, we would have to come back and
24 modify this decision.

25 So what it means is we go out the door

1 with a flow cap unless something changes. And
2 that, I think, may make it more satisfactory to
3 the parties, because it's very clear there's a
4 true effective cap in place.

5 We've also maintained the Gunderboom
6 study. And one of the things that I emphasized on
7 December 18th, and I'd like to emphasize for the
8 Committee's benefit, is it's not a proposal to
9 install Gunderboom, it's a proposal to study the
10 feasibility of Gunderboom installed in an open
11 ocean and a bottom system.

12 That, in and of itself, is valuable
13 information that might lead to a future
14 installation of a Gunderboom or another aquatic
15 filter barrier system on an intake structure. But
16 all we're doing is it's another enhancement, from
17 our perspective, is proposing to have that study
18 performed by the Gunderboom company and have those
19 results published so that other parties are able
20 to see whether or not it is a feasible option.
21 And if they disagree, have the ability to, you
22 know, begin to put that in the record.

23 We anticipate that the NPDES renewal,
24 the next NPDES renewal for the El Segundo
25 Generating Station, or perhaps before that or

1 perhaps after that, that at one point of another,
2 with new regulations, this may come up as one of
3 the potential options should they find that there
4 needs to be a change in the entrainment of the
5 facility.

6 And so by doing the study we're actually
7 kind of adding some more information into the
8 record at that point. But it would still be an
9 open issue and something that would be subject to
10 vigorous debate and discussion at that time.

11 And then we also modified our first
12 condition. There was a point well made by the
13 staff at the December 18th workshop that there was
14 already a condition requiring we have an NPDES
15 permit. And it's in the soil and water
16 conditions.

17 Our point was to try to make sure that
18 the NPDES renewal process, which as much as it's
19 about soil and water, is also about significantly
20 316(b) of the Clean Water Act and entrainment and
21 impingement. And therefore, that there ought to
22 be something in the biology area that indicates
23 that with the renewal of the NPDES permit that the
24 CEC Staff, the CPM needs to be informed of those,
25 and allowed to participate by providing copies of

1 correspondence, et cetera.

2 And so the point of BIO-1 is to
3 supplement what's in the soil and water conditions
4 to make sure that from the biology perspective the
5 issues with the NPDES permit are connected to the
6 Energy Commission and their decision.

7 Overall, I can't speak for any other
8 parties, because I'm only speaking from our
9 perspective, that what we've offered is four
10 conditions of certification that we recommend the
11 Committee impose upon us. And that's simply one
12 party, our party's recommendation.

13 I think there's a strategic issue
14 underlying all of this, though, and a
15 fundamentally important issue. And that is
16 whether or not the flow cap is something that, in
17 and of itself, eliminates the question of impacts.

18 And if there's an issue that we're
19 interested in explaining in the evidentiary
20 hearings, that's what it is, is conceptually what
21 does this flow cap mean and what does it do.
22 We're not proposing to change the project in any
23 way. We're simply proposing a particular means of
24 putting a constraint on the operation of the
25 facility in the future.

1 And the staff may have a different
2 position, so once again, I'm only speaking from
3 our perspective. But for that reason what we
4 proposed is a fairly simplified set of witnesses.
5 And, in addition to discussing alternative
6 cooling, which I don't think we have on a separate
7 topic, so it goes in with biology, and our
8 position that it's not feasible.

9 We want to provide testimony that
10 explains how the flow cap fundamentally deals with
11 the topic of whether or not there's a flow
12 increase; and whether or not there's an increase
13 in entrainment issues from the staff and the
14 Coastal Commission's stated position that you
15 should use a baseline of recent flows.

16 HEARING OFFICER SHEAN: Okay. I guess
17 what appears, at least on the surface here, is a
18 legal issue of whether or not, given the proposal
19 of a cap to a historical average, the effect of
20 that, given what the Commission has to analyze,
21 number one being compliance with laws, ordinances
22 and regulations. And second, the CEQA component
23 that would the project otherwise potentially cause
24 an impact. Since you have an existing NPDES
25 permit, if I understand correctly, the basis upon

1 which the staff was proposing to look at the
2 potential impact of the project under CEQA has
3 largely been based upon the idea that you were
4 going from your historical use to something closer
5 to the permitted use?

6 MR. ABELSON: That's not --

7 HEARING OFFICER SHEAN: Is that correct
8 or --

9 MR. ABELSON: No, that's not a correct
10 statement.

11 HEARING OFFICER SHEAN: Okay.

12 MR. ABELSON: Could I take just a couple
13 minutes to --

14 HEARING OFFICER SHEAN: Sure, why don't
15 you go ahead.

16 MR. ABELSON: -- frame the staff's view
17 of the issues?

18 First of all, I want to say that from
19 our perspective we want to compliment the
20 applicant for diligent work on this case in many
21 many many areas. And the results, I think, are
22 going to be apparent largely to the Committee
23 today, that virtually all the issues that have
24 been outstanding have been resolved.

25 On biology, unfortunately, there has

1 been a difference of take both on the facts, the
2 science and the law from the day this case was
3 filed. And those differences, unfortunately, are
4 fundamental and they remain.

5 About two months ago at the last
6 prehearing conference the applicant, for the first
7 time in two years, changed what it was offering in
8 terms of a description of its project, or
9 description of its mitigation, or what it was
10 proposing as an enhancement with regard to
11 biology.

12 And it acknowledge at the time of
13 putting the four new proposed conditions on the
14 table that no one had seen them; that it wasn't
15 intending to surprise anyone or ambush anyone or
16 do anything unethical or improper, but it did want
17 to try to move the issue forward as it has
18 honestly done on many many other issues, and which
19 we appreciate very very much.

20 The Committee took note of that and
21 directed all the parties to hold a workshop on a
22 couple of contested issues. There was still some
23 outstanding issues on visual and there was this
24 fundamental dispute about biology. And this new
25 proposal that the applicant had made two months

1 ago.

2 A little over two weeks ago we had a
3 very lengthy, and I believe, at least from staff's
4 perspective, a very constructive workshop
5 discussing biology for almost five hours on the
6 record in terms of what the applicant's proposal
7 was, what everybody's understanding of it was,
8 what concerns people had about it or did not have
9 about it, and so on.

10 And the truth is is that there were
11 serious concerns about the four conditions that
12 were proposed. And I'm not going to reiterate
13 today what those were, although I'm prepared to if
14 the Committee wishes to hear them.

15 But there were serious concerns that the
16 proposals that were put forth two months ago did
17 not address the CEQA requirement that the project
18 do no significant impact, above baseline, to the
19 bay. And that the project enhance and restore, to
20 the extent feasible, pursuant to the California
21 Coastal Act and the California Energy Commission's
22 Act, the biological resources that the project is,
23 from staff's perspective, seriously impairing.

24 The applicant listened, I think, quite
25 attentively, and I thought quite constructively to

1 the concerns that we raised. They had to do in
2 part with whether or not the flow cap, which is a
3 very interesting offer and suggestion, whether or
4 not it is properly structured to, in fact, assure
5 that there is no increase above baseline, given
6 seasonality variations historically, currently,
7 and looking to the future.

8 And there was also concern about whether
9 or not there were any studies that would tell us
10 meaningfully how we could restore and enhance to
11 the extent feasible.

12 And it was staff's position then and it
13 remains staff's position that there is no such
14 viable biology study to allow the LORS compliance
15 that's required under Coastal Consistency Acts at
16 a minimum.

17 There was also the notion of the need to
18 put forward either a technology solution and/or a
19 financial solution that would, in fact, restore
20 and enhance, to the extent feasible.

21 The applicant has obviously listened
22 carefully to the points of staff and many other
23 concerned intervening parties have raised with
24 regard to biology. Those parties include the
25 National Marine Fisheries Service, the Fish and

1 Game Department, the California Coastal
2 Commission, the City of Manhattan Beach, citizens
3 from the City of Manhattan Beach and most
4 recently, the Santa Monica BayKeeper and Heal The
5 Bay Associations.

6 As a result of the workshop, the
7 exchange of information that took place two days
8 ago, the applicant presented for the first time
9 some additional modifications in its proposal.

10 And speaking for the staff, and only for
11 the staff obviously at this juncture, we have
12 looked at those proposals. We are disappointed,
13 quite honestly, that the applicant was not more
14 forthcoming, given the nature of the workshop that
15 we had. We can go into detail today, or at the
16 hearings, but the proposals, as laid forth today,
17 are wholly inadequate, as a matter of fact, as a
18 matter of science, as a matter of law, to satisfy
19 any of the concerns that staff has.

20 I do want to say that I think the
21 applicant has started to move in the correct
22 direction. And I believe, and I believe staff
23 believes, that this is an issue that could
24 conceivably be resolved between the applicant and
25 the staff.

1 We absolutely, Commissioner Shean, are
2 not there today -- Commissioner Pernell -- and as
3 things stand, we are going to need an extensive
4 period of hearing time, I would say at least a
5 couple of days, to explore the deficiencies in the
6 science; the inadequacies of the proposal; the
7 concerns of the many many parties about the status
8 and condition of Santa Monica Bay. And the need
9 for additional work to be done before this project
10 can receive a license at all.

11 The last thing I'd like to say, Adviser
12 Shean, is that our concern is not solely CEQA, as
13 you had started to say a moment ago. It has been
14 focused on CEQA because that was a threshold issue
15 that you have to get over.

16 But there is also the Coastal Act
17 Consistency to restore and enhance to the extent
18 feasible. And we believe that both issues, CEQA
19 and the LORS compliance with the Coastal Act, are
20 not satisfied by the current application.

21 We are expecting, at this point, to go
22 to hearings and, as you note from our prehearing
23 conference, we do believe that there's some
24 preparation that's needed so all parties are aware
25 of the nature of their differences, and the

1 Committee can focus its time most productively.

2 Thank you.

3 HEARING OFFICER SHEAN: Okay. Any other
4 parties want to be heard on this?

5 MR. FLEISCHLI: Thank you, Hearing
6 Officer Shean. Steve Fleischli, Executive
7 Director, Santa Monica BayKeeper.

8 I appreciate the comments of staff very
9 much. I would agree with most of them. We, too,
10 just got this most recent proposal. We got it
11 yesterday. And we feel it's inadequate; it
12 doesn't address our particular concerns about the
13 extractive use and the impacts of that extractive
14 use.

15 It also doesn't say anything about
16 waiting for results of the studies before
17 operations would commence. And it doesn't propose
18 anything about implementing any recommendations
19 from the Santa Monica Bay Restoration Project.

20 I talked to Dr. Mark Gold this morning
21 and last night about this. Dr. Gold is the chair
22 of the steering committee for the Santa Monica Bay
23 Restoration Project. He's also the Executive
24 Director of Heal The Bay, which I represent right
25 now.

1 He was unaware of this until this
2 proposal, so I think there's a lot more dialogue
3 that will need to occur there, and a lot more
4 assurances in terms of what this really means in
5 terms of the impacts of this facility.

6 In terms of LORS, I think Staff Counsel
7 has made very clear the position about the
8 California Coastal Act. I think what's very
9 important here is you look at the Coastal Act with
10 maintain and enhance, and where feasible, restore.
11 We're not convinced that it's not feasible to
12 restore this with some of the recommendations that
13 have been put forth in terms of eliminating the
14 extractive use.

15 Also when you look at the same Coastal
16 Act section, special protections to areas of
17 special biological or economic significance. And
18 I don't think it can be disputed recently by
19 anyone that Santa Monica Bay is not important,
20 both ecologically and economically, in terms of
21 its listing on the National Estuaries Program
22 under the Clean Water Act which took place in the
23 late 1980s. One of only 16 or so water bodies in
24 the United States listed on that in terms of its
25 significance for water quality protection.

1 I would agree with staff's proposed
2 schedule in terms of moving forward. I think we
3 will need a fair amount of time for both sides so
4 that there is no trial-by-ambush, I think as staff
5 put it in their papers. We don't want to surprise
6 them with the evidence that we want to put on, and
7 we certainly don't want to be surprised by them.

8 One addition to our prehearing
9 conference statement that I'd like to raise this
10 morning is we would like to present, if possible,
11 Dr. Richard Ambrose from UCLA. One question has
12 come up. Dr. Ambrose represents CEC at the Morro
13 Bay on Morro Bay issues. And we are now -- I
14 believe staff counsel, other staff counsel is
15 looking at whether or not there's a potential
16 conflict or any problems associated with that.

17 And we would like to, if we are able, to
18 use Dr. Richard Ambrose from UCLA as one of our
19 witnesses, in addition to Dr. Mark Gold.

20 Those are the only comments I'd have at
21 this time.

22 HEARING OFFICER SHEAN: Okay. Other
23 parties?

24 MR. PERKINS: Only that I should clarify
25 something in my -- our prehearing statement which

1 says that we don't anticipate calling witnesses on
2 this issue ourselves. But then if you look at my
3 witness list it includes Dr. Mark Gold, and it
4 includes the applicant's expert.

5 The point I intended to make was that we
6 do intend to be able to examine other people's
7 witnesses. And then I realized I want to make
8 sure that those two guys are present on somebody's
9 witness list.

10 So if someone else calls those, then we
11 won't need to call them. If not, then I need to
12 modify my statement that I don't intend to call
13 anybody.

14 HEARING OFFICER SHEAN: Okay.

15 MR. NICKELSON: I don't know if it's
16 been mentioned, but I docketed on November 18th a
17 letter concerning biology. And in that I address
18 that issue of the applicant providing the \$400 or
19 identifying \$400,000 -- \$500,000, you know, for
20 the Fish and Game.

21 And to me it just seemed like this was
22 an opportunity for the applicant to put a small
23 amount of money, you know, in order to eliminate
24 the concerns with using the secondary treated
25 water. And if you took a look at what that

1 amounted to was .2 of 1 percent of what their
2 projected cost of \$250 million, you know, in order
3 to do that.

4 And I thought well, that bothered me
5 until the meeting, the last workshop that we had
6 when they came out and said that the \$500,000 was
7 an -- it wasn't intended or tied to any measure.
8 It was just to be given freely and out of the good
9 nature of the applicant, you know, to Fish and
10 Game, you know, to do what, you know, to add a
11 game warden.

12 And it just seems to me that they came
13 in now, Steve eloquently spoke at the last meeting
14 and it raised other concerns. And then they
15 address now another million dollars, and remove
16 the \$500,000; that was taken back. And here,
17 again, I think this is just another ploy by the
18 applicant to try to buy off a group who can do
19 something, you know, and who's got the power and
20 the knowledge.

21 And, you know, again, Steve spoke so
22 eloquently, I was set back at the last workshop by
23 the things that he had said. They're things that
24 I can't address eloquently, because I'm not an
25 eloquent speaker.

1 But I appreciate the fact, you know,
2 that I hope that this isn't just a ploy again, you
3 know, to buy off this group to get them out of the
4 equation, you know, to eliminate any need to
5 conduct a 316 study, or to do some work actually
6 that would impact this project, you know, in the
7 bay. And I'm not talking about the entire Santa
8 Monica Bay, I'm talking about how it affects, you
9 know, the bay here.

10 Thank you.

11 HEARING OFFICER SHEAN: Okay. Anything
12 more from anybody else on marine or aquatic
13 biology here?

14 MR. ABELSON: Mr. Shean, before we move
15 beyond that issue or whatever you may be doing for
16 closure on that issue, could I ask you to just see
17 if the Coastal Commission is on the line and
18 whether they have anything specifically to say on
19 that issue? Because I know they're concerned
20 about it.

21 HEARING OFFICER SHEAN: Mr. Luster, are
22 you there? Tom? All right, the record should
23 reflect that we've attempted to raise Mr. Luster,
24 who's from the Coastal Commission, on the
25 teleconference intertie here, and he's not

1 responding.

2 MR. REEDE: Excuse me, does it show that
3 we're still connected? Okay, I'll re-dial it.

4 PRESIDING MEMBER PERNELL: I think we're
5 dead.

6 (Parties speaking simultaneously.)

7 (Off the record.)

8 PRESIDING MEMBER PERNELL: All right, my
9 question of staff is can you lay out what your
10 proposed timeline is?

11 MR. ABELSON: Yes, Commissioner, thank
12 you. In our prehearing conference statement we
13 have offered a schedule that's not tied
14 exclusively to biology, but certainly is driven,
15 in significant part, by that issue.

16 You had originally reserved tentative
17 dates for roughly three weeks from today for
18 hearings. We have suggested a slightly different
19 schedule that would add five additional weeks
20 beyond that to the hearing date in the following
21 sequence.

22 Three weeks from today the applicant
23 would, and intervening parties would file their
24 official testimony in writing on the issues. And
25 that would include the issues that need to be

1 cleaned up a little bit as we were talking about
2 with regard to noise and the others of that
3 nature. And certainly with regard to the issues
4 that are still of a difference between the
5 parties.

6 Our schedule in our prehearing
7 conference then calls for a three-week period of
8 time after that to allow all parties to file
9 responses, I called it rebuttal, I think, in the
10 prehearing conference; but, basically responses so
11 that the record is clear. The staff has had an
12 opportunity, and others have, to reflect on the
13 record what their reactions are to the situation.
14 The ball has been brought to rest. And we, in
15 effect, know where the applicant stands on the
16 issue. We know where the differences are between
17 the applicant and the various parties, including
18 staff.

19 We then asked for an additional two
20 weeks beyond that to allow the witnesses to
21 actually get ready for the hearing. The net
22 effect of this would be to extend the hearings
23 five weeks beyond the three weeks from now that
24 you all have tentatively reserved.

25 I believe the date that the calendar

1 shows that to be is in early March. And that's --

2 PRESIDING MEMBER PERNELL: So you're
3 talking about eight weeks?

4 MR. ABELSON: Yes, an eight-week to
5 hearing schedule versus the tentative one of three
6 weeks to hearings that were mentioned in an
7 earlier order, yes.

8 PRESIDING MEMBER PERNELL: Thank you.

9 HEARING OFFICER SHEAN: On page 4 of
10 your prehearing conference statement you're
11 showing final applicant and intervenor written
12 testimony. Did you intend to include staff in
13 this testimony?

14 MR. ABELSON: No, because at the moment
15 the staff has a final staff assessment and related
16 errata that's on the record. Our position is of
17 the ways things stood back in the fall, is well
18 known.

19 But as I indicated in my summary
20 statement about biology, things have moved on
21 biology and probably other issues, as well, but
22 certainly on biology, actually twice since the
23 final staff assessment and related errata.

24 So the way that I'm looking at it, staff
25 is looked at it, Hearing Officer Shean, is that

1 the applicant would file its written position;
2 intervening parties would file their written
3 position. And staff and all of the parties would
4 be afforded an opportunity to file, in effect, a
5 final closing set of responses that should allow
6 you folks to understand clearly how the issues are
7 drawn, where the differences lie. And then, of
8 course, we can explore those through live
9 witnesses at the time of the hearing, itself.

10 HEARING OFFICER SHEAN: So if I
11 understand it, up to the point where the parties
12 are going to file written rebuttal testimony under
13 your proposal, they will not know staff's reaction
14 to the applicant's testimony, is that correct?

15 MR. ABELSON: Well, they wouldn't know
16 the reaction to the applicant's testimony because
17 there isn't any testimony up to now.

18 HEARING OFFICER SHEAN: Assuming the
19 schedule you're talking about, --

20 MR. ABELSON: Yes.

21 HEARING OFFICER SHEAN: -- that the
22 applicant will file testimony and the intervenors
23 will file testimony but the staff will not. Then
24 you propose three weeks from that event --

25 MR. ABELSON: Correct.

1 HEARING OFFICER SHEAN: -- to the point
2 where parties will file rebuttal testimony?

3 MR. ABELSON: Response, if you prefer,
4 is probably a --

5 HEARING OFFICER SHEAN: I prefer
6 rebuttal. But, so they have your current FSA --

7 MR. ABELSON: Right, which of this
8 issue, for example, recommends denial or the use
9 of reclaimed --

10 HEARING OFFICER SHEAN: And in some
11 parts may be a little bit obsolete. They won't
12 have final testimony from you on or about January
13 28th. But the first time any of us hear from you
14 is going to be when rebuttal testimony is filed.

15 I'm just trying to understand the
16 utility for the public process of the staff not
17 participating in either that initial round of
18 testimony so that the parties then have an idea,
19 well, I can relax because I'm confident that the
20 staff is representing my view. Or I'm scared to
21 death because I don't know what's going to happen
22 and I don't know where staff is.

23 MR. ABELSON: Right.

24 HEARING OFFICER SHEAN: Can you address
25 that, please?

1 MR. ABELSON: Sure. Basically I think
2 if we look at the normal process that this
3 Commission follows, what you get is the applicant
4 making a proposal, it's called an AFC and whatever
5 adjustments that make to it, or amendments they
6 make to it along the way. And the staff filing
7 its position on that, and the parties filing their
8 position on that.

9 What we have in this case, because there
10 has been a change of position on a number of
11 issues, some of it quite salutary in resolving of
12 issues and some of it not getting us there yet, or
13 perhaps at all, we need to get the applicant's
14 position on the record with the rationale that
15 they're using. In effect, they need to true-up
16 their AFC. We need to know what it is we are all
17 commenting on.

18 Until we know what that is our testimony
19 stands. We know what they filed early on. And
20 we've commented on it and if that were what we
21 were talking about there would be no need for this
22 additional round, at least with regard to biology.

23 The applicant clearly wants to put
24 forward and is offering to put forward a new
25 proposal or a new position, as it were, in terms

1 of how they view what they're doing and why
2 they're doing it and how they're doing it.

3 Fine. Let them do that, and let them
4 state clearly, in effect a supplemental AFC, an
5 amended AFC, if you want to think of it in those
6 terms, what it is that this project is, as it
7 relates to biology as of this date.

8 When we all see that we can then respond
9 to it positively or negatively, but I think in
10 terms of the issue you're raising, Hearing
11 Officer, that insofar as there have been
12 conditions that were proposed two months ago, and
13 conditions that were proposed two days ago, staff
14 is on the record both at the workshop and now
15 today, as saying these conditions, as proposed,
16 are not acceptable to staff. We need to
17 understand the rationale; we need to understand
18 the logic; and we need to file for your benefit
19 our reaction to them. But we can't do that until
20 we see that in their language now.

21 PRESIDING MEMBER PERNELL: So if you
22 seen that within five days -- say they file
23 something and you see their rationale within the
24 next five days, --

25 MR. ABELSON: You mean if they were to

1 file in five days instead of three weeks?

2 PRESIDING MEMBER PERNELL: Yeah.

3 HEARING OFFICER SHEAN: Or even ten.

4 MR. ABELSON: Okay, whatever their
5 timeframe is, I think from our standpoint, from
6 staff's perspective, I think we're indifferent as
7 to how quickly the Committee wants them to file.
8 We recommended three weeks because we think
9 there's a number of housekeeping matters, that
10 that's fair. And there may be other parties who
11 want to state an initial position on the record.

12 What we're asking for because we will
13 need it, is three weeks to give a thoughtful
14 reviewed analysis of it, review internally, and
15 basically the filing that we need to do.

16 So if it's ten days from now that
17 they're asked to file, yeah, we could expedite it
18 by, you know, that degree. But we would still
19 want the three weeks afterwards to respond.

20 PRESIDING MEMBER PERNELL: All right.
21 We can move on unless you have --

22 HEARING OFFICER SHEAN: Yeah, we're
23 going to move on.

24 MR. McKINSEY: I'd like, if I could
25 briefly?

1 HEARING OFFICER SHEAN: Sure, go ahead.

2 MR. MCKINSEY: Hearing Officer Shean,
3 you'd asked the question about at what point we
4 would hear from the staff, and it did raise a
5 little bit of a question for us.

6 One of our issues is that, in fact I
7 would have to disagree in the sense that we have,
8 on the first prehearing conference, in the
9 transcript, a discussion of our idea of a flow
10 cap.

11 We've also got a rationale explained in
12 our prehearing conference statement. And I don't
13 know that we have anything more significant to add
14 because it's really not a dynamic physical project
15 description idea. It's a proposed constraint.

16 And we have only heard at the workshop a
17 tentative idea of what we thought the staff's
18 point was. It wasn't very specific, but it was --
19 they had a periodicity concern and, in fact, that
20 may have been the only -- and then, I think,
21 concern about what should the baseline be.

22 The reason why we have put what we did
23 in the condition was to say okay, then here's our
24 position on that. Here's our position on the
25 periodicity idea, and here's our position on what

1 the numbers should be in the flow cap.

2 And I don't know that we have a lot more
3 to say on that area. And I would almost say that
4 I like the idea of the staff also filing
5 testimony, but in a different way. One of the
6 reasons is because the staff, themselves, have
7 published other documents since the FSA. We have
8 an FSA, we have an FSA errata, and I think we had
9 an errata to the errata. And then we have agreed-
10 to conditions published by the staff.

11 And at a minimum, even if their written
12 testimony is just here's our testimony and a list
13 of appropriate documents, at least it would give
14 us a baseline in terms of what their position is
15 going to be.

16 Other than that I don't think we have a
17 fundamental disagreement with the idea of
18 providing written testimony and providing an
19 opportunity for rebuttal. But, the point, I
20 think, was almost well made that we're not going
21 to hear what the staff's position, other than some
22 comments about periodicity, and what the baseline
23 should be about the flow cap idea, until after
24 we've already filed our rebuttal testimony to
25 other parties' testimony.

1 And so we would be going into the last
2 two weeks really having just gotten some official
3 testimony from the staff, because the prehearing
4 conference doesn't have any comments on it. The
5 only real comments we have is at that workshop on
6 the 18th.

7 And so we wouldn't really have any
8 specific testimony from the staff. So we would
9 never really get to rebut anything the staff says
10 in writing. We can certainly do it in hearings,
11 but that's going to add to this ambush and
12 surprise idea.

13 And I don't think that there's anything
14 that confusing at this point about what we
15 proposed as a constraint. We put it very
16 specifically in our four conditions of
17 certification that we've proposed. And I would
18 like to actually see that the staff would respond
19 to those on the same point where we're providing
20 our written testimony.

21 And our written testimony might be
22 similar to what we've seen in other projects where
23 we say, you know, we plan on relying upon this
24 portion. Usually, you know, you have some kind of
25 record prior to the FSA that the applicant relied

1 upon. In other words, here's our AFC testimony or
2 here's that.

3 I don't know that our testimony is
4 really going to be that hard. The only real area
5 we've got something to work on is the area of
6 biology. And I think that if the staff is able to
7 file their testimony in that area that gives us an
8 opportunity to file rebuttal testimony to theirs.

9 And that would really lead us to the
10 point where when we see the rebuttal testimony we
11 have a good idea of what we're going to be dealing
12 with at any kind of an evidentiary hearing on it.

13 So, I like the idea of having the staff
14 filing written testimony. They could choose not
15 to comment on anything related to -- they could
16 simply say our testimony is the FSA and the errata
17 and the errata to the errata, and the two agreed-
18 to conditions and the land condition just
19 published. And that could be their testimony.

20 But, I would like to see that at least
21 so we have a baseline of what their testimony is.
22 That way we won't be hitting surprises when we hit
23 the evidentiary hearing, as well.

24 Other than that, I think in some ways
25 this might make sense.

1 HEARING OFFICER SHEAN: Just so I'm sure
2 we're using the same words. When you use the word
3 periodicity, I might use seasonality. Is that
4 correct? They're analogous as you're using that?

5 MR. McKINSEY: As I understand the point
6 is that there's a variation in the density and the
7 amount of ichthyoplankton in the water on an
8 annual basis. So if you look different months of
9 the year, you're going to see different quantities
10 of different ichthyoplankton, of different
11 species.

12 HEARING OFFICER SHEAN: So there's a
13 heightened sensitivity to the flow in particular
14 months?

15 MR. McKINSEY: Right, and so what we'd
16 heard, and this is kind of, you know, this is more
17 what the testimony would be about, but I know
18 there's an issue surrounding the flow cap as to
19 whether or not an annual number is right, or
20 whether there ought to be some other numbers for
21 particular times of the year.

22 And that was what we modified in our
23 proposed condition. But I'm really not trying to
24 do the testimony, I'm really kind of getting the
25 facts. We would like to get something from the

1 staff on that that gives us the ability to rebut,
2 as well as other parties. If they don't want to
3 comment on these conditions, if the parties feel
4 that these conditions are not where they want to
5 go, they want to see 316(b) like study, they want
6 to see, you know, no decision be made for awhile,
7 I mean they can certainly do that testimony.

8 But we would like the hearing order to
9 include the staff as a party that's providing
10 testimony, that's all.

11 MR. ABELSON: If I could just make one
12 final comment on this topic. You know, staff
13 undoubtedly, because it's overworked and
14 overburdened and would rather not have additional
15 responsibilities put on it, but given what I hear
16 the applicant's attorney proposing, I don't think
17 we'd have a problem as long as we get an
18 opportunity, because this is what we are most
19 concerned about, to understand what it is that the
20 applicant's proposing, what their rationale is.

21 They've got a whole series of new
22 numbers, for example, in there about, you know,
23 what the annual volumes are, 139 billion gallons a
24 year. We have no idea where that number came
25 from. It's not consistent with any numbers we're

1 familiar with.

2 The seasonality issue, should it be
3 daily, should it be weekly, should it be
4 quarterly. I mean biota, monthly, fish are very
5 very sensitive creatures, and simply placing a
6 general cap that says, you know, we can take this
7 water anytime the power needs it, regardless of
8 whether the fish are spawning or not, is certainly
9 not something the staff's going to be particularly
10 inclined to want to support.

11 So my point to you on the process point
12 is this: I don't think staff would like to have
13 to file something in three weeks, but we can
14 certainly go through a pro forma statement, what
15 our position is. It's not going to be hard for us
16 to do. So that, as you indicated, parties can
17 sort of know where we're at going into the thing.
18 Provided that we are given the three weeks,
19 Commissioner, afterwards, once we've seen what
20 their final position is and what their rationale
21 is for it, to respond to that. And, in turn,
22 they'll have an opportunity, of course, to respond
23 to our pro forma position, as well.

24 HEARING OFFICER SHEAN: Well, I think
25 the understanding here has got to be out of the

1 prehearing conference you are bounding the
2 testimony.

3 MR. ABELSON: Right.

4 HEARING OFFICER SHEAN: I mean,
5 discussions about ambush and surprise are only
6 appropriate if you get to hearing and something
7 that you don't expect --

8 MR. ABELSON: Right.

9 HEARING OFFICER SHEAN: -- is now a
10 topic. We all know the general parameter here of
11 the aquatic biology issue. And they are
12 apparently saying that the conditions that are
13 enumerated in their prehearing conference
14 statement is the boundary of their presentation.

15 So they're not going to go off and do some
16 weird other thing.

17 And the same thing with staff. You tell
18 us what you're going to present, and that's the
19 boundary of your direct testimony.

20 MR. ABELSON: Well, with one qualifier.
21 I mean if you're proposing a flow cap, which they
22 now are. And you have 139 billion gallons a year
23 that you're asking to suck out of Santa Monica
24 Bay, I mean presumably you have some reason that
25 you came up with that number. Some reason in

1 terms of engineering, some reason in terms of
2 economics, hopefully some reason in terms of your
3 view of why this isn't going to hurt the biology.

4 I don't think that we would avoid the
5 surprise issue for mitigating it if all we said
6 was that applicant needs to say their proposal's
7 139. Staff needs to say that's unacceptable,
8 let's go to hearings. That doesn't true up the
9 issues.

10 And what I am asking for on behalf of
11 staff, and I think it will benefit the Committee
12 and all of the public process we're involved in,
13 is let's have the applicant both state what
14 they're proposing as a project. Explain why they
15 think that project satisfies, you know, LORS
16 requirements and the environmental protection that
17 we're all seeking here.

18 Let staff file a thoughtful response to
19 it, whether we agree with it in part, disagree
20 with it in part, or some variation of that theme.

21 And then we will all know, going in,
22 what the issues are in detail. And AFC does not
23 consist of simply stating that we plan to build a
24 600 megawatt power plant, you know, on the coast.
25 You know, it's volumes and volumes of supportive

1 documentation explaining the details of what the
2 basis is for the proposal.

3 So I am very much hoping --

4 HEARING OFFICER SHEAN: Having done this
5 for 25 years, I do know --

6 MR. ABELSON: Yeah, no, no, I
7 understand. No, no, I understand. So all I'm
8 saying is I'm hoping that whatever is filed in
9 three weeks that it isn't simply conveyed to the
10 applicant that they should simply state, you know,
11 these three conditions and that's it.

12 Rather what we're looking for is these
13 conditions are different than the original
14 proposal. They are different. And we commend the
15 applicant for that. We think there's been some
16 thought put into this and some narrowing of the
17 issues.

18 We need to hear the rationale that
19 they're using, that they believe is the basis for
20 these proposals. And then we will respond in good
21 faith in writing in three weeks. And then parties
22 will fully understand and the Committee can focus
23 us particularly at the hearings on what it is it
24 wants to hear more about at that point.

25 PRESIDING MEMBER PERNELL: All right, I

1 think the Committee has heard everybody's points.
2 And they will be considered. However, the
3 schedule do remain with the Committee.

4 Mr. Shean.

5 HEARING OFFICER SHEAN: Okay. We are
6 going to move on to, given the fact that Mr. Loyer
7 is aboard here, with air quality, and then we'll
8 come back to visual.

9 MR. FLEISCHLI: Mr. Shean, --

10 HEARING OFFICER SHEAN: Yes.

11 MR. FLEISCHLI: -- before you move on,
12 can I just raise a couple issues on the schedule,
13 since I know that it rests with you, and I want to
14 make --

15 HEARING OFFICER SHEAN: Sure, why don't
16 you just identify yourself again for the record.

17 MR. FLEISCHLI: Steve Fleischli with
18 Santa Monica BayKeeper -- just so you're aware of
19 our position.

20 We would very much like the three weeks.
21 I heard the Commissioner allude to maybe something
22 shorter than that. We, as intervenors, aren't
23 intending to delay this process in any way, but I
24 think we will need three weeks to provide our
25 written testimony.

1 It would also be nice, I've never been
2 engaged in this process with this particular
3 Commission before, in terms of the substance and
4 detail of the written testimony, I think that's
5 what staff counsel was getting into, it would be
6 very easy for us to, in five days, say that we
7 think Santa Monica Bay's important, but I'm sure
8 the applicant and everybody else is going to want
9 to know why and what's the substance and detail
10 behind that.

11 And so, you know, anything you can
12 provide, maybe I'll talk to the public assistance
13 folks, about the substance and detail it needs to
14 be in there to make sure that there is no
15 surprise, and to make sure, you know, that they're
16 providing, you know, the parameters and the
17 details and what they're relying upon in those
18 documents, if that's indeed what this Commission
19 expects. And will do the same. But we can't do
20 that in a week. We will definitely need three
21 weeks for that.

22 Thank you.

23 HEARING OFFICER SHEAN: All right, we'll
24 take that into consideration.

25 PRESIDING MEMBER PERNELL: Thank you.

1 HEARING OFFICER SHEAN: Okay, Mr. --
2 you've got the -- is he still there?

3 MR. REEDE: Joe Loyer, are you still
4 there?

5 MR. LOYER: Yeah, barely.

6 MR. REEDE: Okay. We've asked
7 Commissioner Pernell's indulgence to address the
8 air quality issues. Currently we're showing one
9 condition of certification, AQC-5, that has been
10 going through conversations relating to the
11 emission reduction credits required to mitigate
12 under CEQA.

13 And I understand you and Mr. McKinsey
14 had conversations yesterday. And Mr. McKinsey
15 submitted emission reduction certificate numbers
16 to you. Would you please, for the Commissioner's
17 benefit, -- the call was lost.

18 HEARING OFFICER SHEAN: Okay, for the
19 Committee's benefit --

20 MR. REEDE: Okay, --

21 HEARING OFFICER SHEAN: -- tell us what
22 you know.

23 MR. MCKINSEY: Can I actually indicate
24 the substance? Joe Loyer indicated that he has
25 two issues. One pertaining to us and one

1 pertaining to the South Coast.

2 He wanted our certificate numbers and we
3 sent over a spreadsheet and docketed it yesterday
4 with the certificate numbers. I have not heard
5 back to see whether or not that met his
6 requirement from us.

7 He also has an issue with the South
8 Coast which is fairly -- it's not too complicated,
9 and I've actually gotten some more information
10 that I was hoping to be able to tell him regarding
11 that, that I think he's going to want to hear.
12 And I don't want to try to speak before he
13 explains that.

14 But it may actually completely resolve
15 his issue regarding the FDOC and its completeness,
16 from the Air District.

17 PRESIDING MEMBER PERNELL: All right,
18 when we get him this time, Mr. Reede, we don't
19 need the introduction.

20 MR. REEDE: Okay, we'll --

21 PRESIDING MEMBER PERNELL: Just get
22 right into it.

23 MR. REEDE: -- just work on it.

24 (Pause.)

25 MR. REEDE: Joe Loyer, are you still

1 there? Joe Loyer? Joe Loyer, are you still
2 there?

3 Oh, well, --

4 HEARING OFFICER SHEAN: Let's --

5 MR. REEDE: -- call response --

6 HEARING OFFICER SHEAN: -- another area
7 of air quality until we either get him back or --

8 MR. REEDE: That was the -- well, this
9 particular condition of certification was staff's
10 only issue unresolved with the applicant. And it
11 appears that staff is moving rapidly towards
12 conclusion of this and agreement with the
13 applicant.

14 However, we have been hindered by the
15 South Coast Air Quality Management District's
16 failure to provide us the requested information
17 that they promised you at the November 7th
18 meeting.

19 And I think the applicant would agree
20 with that statement, that neither they nor us have
21 gotten that information.

22 MR. McKINSEY: Well, this is why -- I
23 don't want to -- what Joe Loyer indicated is that
24 the South Coast has never actually said how many
25 total pounds of PM10 and SO2 do you need to have

1 as an ERC.

2 And what he said is they've clearly
3 approved the amount that you're providing. But
4 they've never specified the amount that we're
5 getting through the rule 1304 exemption.

6 It turns out what he's not catching is
7 there's some information in the FDOC that
8 indicates they're incorporating all the
9 information in the PDOC. And in the PDOC it has
10 those exact numbers.

11 So when the South Coast published their
12 letter in November providing the other information
13 they wanted, I think they were assuming that Joe
14 Loyer understood the other information he wanted
15 is sitting in the PDOC from a year and a half ago.

16 But it's just -- there's just a
17 paragraph in the FDOC that says we're also
18 incorporating this information from the PDOC.

19 That's what I wanted to tell him,
20 because we may not be waiting on the South Coast
21 for anything. What he wants may already be
22 sitting in the PDOC.

23 MR. REEDE: Yeah, but you see that's
24 only for the priority reserve. He's still talking
25 about the community bank.

1 MR. McKINSEY: It's, what he wanted was
2 the total number that would be required to offset
3 the project. And then how much is going to come
4 from rule 1304 and how much we're providing as
5 ERCs. And then where we're providing them from.

6 And the piece that's missing is that
7 total number, which then says how much is going to
8 come out of the community bank. He doesn't think
9 that the South Coast has ever committed to how
10 much they're going to be pulling out of the
11 community bank. And they obviously ought to have
12 to in order to approve the air permit.

13 And that's --

14 MR. REEDE: Commissioner Pernell, I
15 think this issue can be resolved prior to
16 evidentiary hearings.

17 HEARING OFFICER SHEAN: Okay, I --

18 MR. REEDE: And we will file --

19 HEARING OFFICER SHEAN: -- reserved some
20 time for it so that --

21 MR. REEDE: Okay.

22 HEARING OFFICER SHEAN: -- should it be
23 necessary, we can do it.

24 MR. REEDE: Okay.

25 HEARING OFFICER SHEAN: What we had then

1 on the other prehearing conference statements
2 principally from Murphy/Perkins was the request
3 for an examination of applicant and staff
4 witnesses, and perhaps direct testimony, yourself,
5 on issues related to local PM10, SO2 impacts, and
6 the need for availability of offsets, is that
7 correct?

8 MR. PERKINS: I think so, except that --
9 yes, I think that's correct. And our focus is we
10 sort of half-way understand the credits program
11 and how it works.

12 When I say half-way, I have sort of a
13 general fuzzy knowledge, but I hope to refine my
14 knowledge by time of the hearings, so that I don't
15 waste your time with my ignorance.

16 But beyond the question of compliance
17 with the AQMD's rules, which will, in general,
18 allow you to get their consent to build your plant
19 even though you don't remediate your own
20 pollution, provided you buy credits of one sort of
21 another, we'd like to focus on whether that's the
22 way to build this plant and whether there are
23 other alternatives. And that will require some
24 testimony, I think.

25 HEARING OFFICER SHEAN: Okay, that'll

1 include some direct testimony, is that correct?

2 MR. PERKINS: Yes, and I think we've
3 listed the witness that we would expect to call on
4 that.

5 HEARING OFFICER SHEAN: Okay. Any other
6 party want to weigh in on this air quality matter?

7 MR. NICKELSON: We had discussed in the
8 November, you know, my concern with the air
9 quality. And one of the problems that I had was
10 the fact that it's difficult to understand, you
11 know, the emissions coming from this plant of
12 being 1837 pounds a day of PM10, how that would
13 relate to a community.

14 So I was able to, through a Naval
15 special assessment, our environmental assessment
16 that was conducted by the Navy and Housing in San
17 Pedro and Palos Verdes, to extrapolate data. And
18 came up with a number it would require 29,430
19 housing units plus 108 retail stores on 6534 acres
20 producing 247,590 average daily trips in
21 automobiles to create the same level of PM10 that
22 we will be experienced, we will experience from
23 this facility.

24 Now, I have that information and I will
25 provide that if you would like to see that. But,

1 our concerns are that during the construction
2 phase, and through your staff, you know, FSA, it's
3 been determined that PM10 will exceed the average
4 by -- could exceed it by 494 percent over a 24-
5 hour period, annually by 236 percent for the
6 three-year construction period, and by 157 percent
7 annually post-construction. So those are, you
8 know, concerns I have as a resident.

9 And at that meeting in November the
10 applicant stated that hey, we want to be good
11 neighbors, so we would consider some of, you know,
12 those items that were suggested by El Segundo, you
13 know, to mediate this.

14 And then I read in the document that I
15 received from the applicant yesterday that they
16 have no intention; that they feel that, you know,
17 again, you know, they're not a problem here.

18 So, I can only, from this kind of
19 confused -- we're not really dealing with the
20 issue of what the direct impact is going to be.
21 And if it's going to be mediated, you know, from
22 outside of the area I don't know if we have
23 anything that we can say about this, Commissioner,
24 or if we have any say in this, but I'm concerned.
25 And maybe this is something that we'll just have

1 to take to the hearing.

2 HEARING OFFICER SHEAN: Okay, well, this
3 is your opportunity to really tell us what you
4 want to do in the hearing. Do you want to present
5 the information that you just alluded to; do you
6 want to ask questions of either the applicant or
7 the Commission Staff --

8 MR. NICKELSON: Well, I plan to present
9 this at the hearing. And I'm just making that
10 available the way that I view this now, at this
11 time.

12 HEARING OFFICER SHEAN: Okay. Well,
13 what we'll do is reserve time for you to do that.

14 MR. NICKELSON: Thank you.

15 HEARING OFFICER SHEAN: All right. With
16 respect to the FDOC, the question then is whether
17 or not we need a live witness from the District to
18 come present it, or whether it can be admitted
19 into the record by stipulation. Is there
20 objection of any parties to its introduction by
21 stipulation?

22 MR. PERKINS: No objection from Murphy/
23 Perkins to having the FDOC, itself, admitted by
24 stipulation. But we do have Mr. Loyer on our list
25 of witnesses, and we do wish to examine him. It

1 doesn't need to be on the content of the FDOC --
2 well, it may have to do with what he thinks about
3 the content of it, and what he knows about stuff
4 that's implicated in there. But I mean I won't
5 ask him to read it.

6 HEARING OFFICER SHEAN: Right. We just
7 need a formal apparatus to get it into our record.
8 All right.

9 MR. MCKINSEY: I may suggest that it may
10 need to be more than one document from the South
11 Coast.

12 HEARING OFFICER SHEAN: You mean the
13 final and the preliminary?

14 MR. MCKINSEY: Yeah, in fact, well, if I
15 recall correctly they published a preliminary and
16 then they modified it. So there's really two
17 documents.

18 And then there was a final determination
19 of compliance. And for that reason, I'm not too
20 sure that we may not want to have someone from
21 South Coast explain the FDOC and the PDOC to make
22 that really clear in terms of where the numbers
23 are coming from and how they work.

24 Normally most of the time we see an FDOC
25 that's all inclusive, it has all the information

1 you could want in one place. And this FDOC
2 doesn't. It looks more like a permit. And
3 they're relying upon all the analysis in the PDOC
4 and incorporating it. And that, I think, has led
5 to some of the confusion.

6 And that may mean that there might be
7 some merit to requesting the South Coast to
8 explain the content of the documents, and which
9 documents make up the -- you can read it
10 officially if you read the FDOC, but that doesn't
11 mean it's really clear.

12 HEARING OFFICER SHEAN: Okay.

13 MR. ABELSON: It would be staff's
14 preference to have a representative from the South
15 Coast present, as well. However, from our
16 perspective, if there were a good phone connection
17 available and that was otherwise an official way
18 to do business, given the status of the issue,
19 that would be acceptable to us.

20 HEARING OFFICER SHEAN: All right.
21 Well, why don't we do this. We'll ask you to
22 invite them and we will include them. And we want
23 to -- perhaps you can make sure that whatever we
24 have in our record is clearly identified.

25 I mean we'll ask you to do that, but you

1 do serve as a backup.

2 MR. REEDE: Commissioner Pernell and
3 Hearing Officer Shean, one of the things that you
4 need to recognize or be aware of, I should say, in
5 dealing with South Coast Air Quality Management
6 District, they do not work on Mondays. So if you
7 schedule, don't do it on a Monday, because they're
8 not going to be here.

9 PRESIDING MEMBER PERNELL: They have
10 every Monday off?

11 MR. REEDE: Yes, they have every Monday
12 off.

13 (Laughter.)

14 MR. REEDE: That's why I wanted to make
15 you aware.

16 HEARING OFFICER SHEAN: All right. Any
17 other party on air quality? Sure, go ahead.

18 MR. GARRY: We had mentioned in our --

19 HEARING OFFICER SHEAN: Could you just
20 identify yourself, again, sir, please.

21 MR. GARRY: Oh, sorry. It's Paul Garry
22 with the City of El Segundo. In our January 3rd
23 letter we had mentioned that I think, based on
24 previous meetings with the applicant, that we were
25 expecting the applicant to provide a letter to our

1 City Council about some of these potential local
2 mitigation measures. And I was just trying to
3 find out what the status of when that might be.

4 MR. REEDE: Excuse me, we never have
5 received a January 3rd letter.

6 MR. GARRY: I just got back from
7 vacation and it was mailed out on January 3rd, but
8 it was not electronically sent out I found out
9 today. So, --

10 MR. REEDE: Did you bring copies --

11 MR. GARRY: Yes, I brought copies --

12 MR. REEDE: -- for everybody? Thank
13 you.

14 MR. GARRY: And it's --

15 MR. REEDE: For the record, Commissioner
16 Pernell, this was not docketed as of close of
17 business yesterday. So this is our first time
18 seeing the document.

19 HEARING OFFICER SHEAN: Okay, ours, too.

20 MR. GARRY: I apologize for not getting
21 it sent out electronically, but I was not in the
22 City to make sure that happened.

23 But related to the air quality I can
24 just read, it's one paragraph. We said: It's
25 previously stated in our December 9th status

1 report, the City Council is concerned that the
2 AQMD regulations for mitigating air quality,
3 particularly the various emission offset programs,
4 do not reduce the local impacts of the emissions.
5 The City would like to see the applicant consider
6 mitigation measures which have a local impact.
7 The applicant has indicated that a letter
8 addressing these issues will be sent to the El
9 Segundo City Council.

10 So I was trying to find out a little
11 more on the status. Because that might affect the
12 City of El Segundo's final position on some of
13 that local air quality impact question, as well.

14 HEARING OFFICER SHEAN: Well, for better
15 or worse, this is sort of put-up/shut-up time.
16 And we need to know whether you'd like an
17 opportunity to make a direct presentation on
18 behalf of the City on this local offset issue. Or
19 if you want to reserve an opportunity to ask
20 questions applicable to this.

21 MR. GARRY: We probably would need to
22 reserve the opportunity at this point, I think,
23 probably receiving more information from the
24 applicant.

25 HEARING OFFICER SHEAN: Okay, we'll

1 reserve that. How about the City of Manhattan
2 Beach? Anything from you?

3 MR. WADDEN: This is Bob Wadden
4 representing the City of Manhattan Beach. As we
5 stated in our prehearing statement, we definitely
6 would like to reserve the right to cross-examine
7 any witnesses. But we will not be making a direct
8 presentation.

9 HEARING OFFICER SHEAN: All right. Any
10 other party?

11 All right, then, so we've got air
12 quality -- public health, then. Turn now to
13 visual resources.

14 MR. REEDE: Commissioner Pernell, with
15 your indulgence, may we take a five- to seven-
16 minute break?

17 PRESIDING MEMBER PERNELL: Yes.

18 HEARING OFFICER SHEAN: Sure.

19 PRESIDING MEMBER PERNELL: We'll take a
20 five-minute break unless the line get long at the
21 restroom.

22 (Laughter.)

23 (Brief recess.)

24 PRESIDING MEMBER PERNELL: Mr. Shean.

25 HEARING OFFICER SHEAN: All right, we

1 want to retrace our steps a little bit and make
2 sure that at least to the extent that alternative
3 cooling technologies are part of our overall
4 aquatic biology issue, that we have discussed
5 that. Because it's the Committee's, I think,
6 intention that this entire subject sort of be
7 treated as a whole.

8 So, if there's some information we need
9 to have for prehearing conference purposes with
10 regard to alternative cooling, then we should hear
11 it now. Is there anything from the applicant on
12 that?

13 MR. MCKINSEY: Our position was that we
14 had planned on presenting a panel of, or a series
15 of witnesses to discuss our issues as to its
16 feasibility. And I think that still stands.

17 HEARING OFFICER SHEAN: And essentially
18 your side is it's infeasible, then, is that
19 correct?

20 MR. MCKINSEY: Correct.

21 HEARING OFFICER SHEAN: All right,
22 staff.

23 MR. ABELSON: Yeah, we would expect to
24 have witnesses on it, but again, with regard to
25 the request for additional written material in,

1 you know, three weeks and three weeks, or whatever
2 the schedule would be.

3 We know that it's the applicant's view
4 that it's infeasible. We have no idea what the
5 basis for that is.

6 HEARING OFFICER SHEAN: Okay.

7 MR. ABELSON: So we would like to know
8 in writing, you know, and with an understanding as
9 to who it is that's supporting that position, and
10 which individual, before we get to trial so that
11 we can hopefully have a meaningful evidentiary
12 hearing.

13 HEARING OFFICER SHEAN: All right. From
14 any other party on that?

15 MR. FLEISCHLI: Steve Fleischli again,
16 Santa Monica BayKeeper. We do think it's
17 feasible, and we will likely put Mark Gold on for
18 some limited testimony on the feasibility.

19 HEARING OFFICER SHEAN: Okay. I think
20 we have that covered now.

21 Let's do visual resources. Again,
22 somewhat like noise, we know that this is, first
23 of all, an area of intense public concern, or at
24 least public interest. And we want to schedule
25 opportunities like we did with noise for a public

1 exposition of where we are, how we've gotten
2 there, what the meaning of the conditions are, and
3 how, at least from the applicant's perspective.
4 And staff -- how it reduces the potential visual
5 impacts to insignificance.

6 So -- and we also note that in the
7 prehearing conference statement by Murphy/Perkins
8 there's a request for cross-examination of the
9 staff's witness and direct testimony on the local
10 visual character, the balancing of screening and
11 viewing, and the appropriate plant species to be
12 used for mitigation.

13 So, what do we have from the parties?
14 Is there anything from the applicant?

15 MR. McKINSEY: There are published
16 conditions by the CEC Staff that we are in
17 concurrence on. And so we have no need to present
18 any witnesses or testimony in the area of visual,
19 and that we don't plan on doing so. That we would
20 just submit ours by declaration and we support the
21 record as it exists and agreed-to conditions.

22 We could certainly provide a narrative
23 since this is the other area like noise that we
24 did a lot of work on that kind of summarizes the
25 work that was done. But in this case, there's at

1 least one instance where it didn't really resolve
2 everything, and that's the issue I think you just
3 mentioned.

4 There may be a very specific issue still
5 remaining that not all the parties were happy
6 with. That regarding the balance of views, and
7 also there may still be an issue regarding plant
8 selection.

9 But in terms of our position I think
10 we're in harmony with the staff in terms of their
11 proposed conditions. And we don't see the need to
12 present any witnesses. The other parties
13 obviously may have different positions.

14 MR. ABELSON: I have a couple things
15 staff wants to say on that. First of all, I would
16 concur with Mr. McKinsey's suggestion that we get
17 a truing up of the record. There has been a lot
18 of work done by many parties on this, and I think
19 very constructively. And the issue is very close
20 to full resolution.

21 But we do need to get a narrative or an
22 update. And I would be very specific and say that
23 the question of the infeasibility of architectural
24 treatment for the units 3 and 4 should be
25 referenced in some way from the applicant, so that

1 it, in effect, becomes incorporated.

2 They have done some additional technical
3 work. We would like to have the opportunity to
4 officially comment on the record about that. I
5 don't think the applicant will be disappointed in
6 our conclusion, but we do need to do that to make
7 the record complete.

8 There are a couple other loose ends that
9 I'd like to ask Mr. --

10 HEARING OFFICER SHEAN: I want to
11 translate that into English. Does that mean
12 you're going to have direct testimony?

13 MR. ABELSON: No. What I'm getting at
14 is before, subject to what Mr. Reede may offer in
15 just a second, what I'm getting at is that the
16 applicant is directed to and indeed provide a
17 true-up of the current situation.

18 And with what we previously referred to
19 as rebuttal testimony, response testimony, we're
20 able to find that it accurately reflects what I
21 think we all believe we're at; we would be able to
22 present that issue by stipulation if the Committee
23 so desired.

24 Now, I want to qualify that, Mr Shean,
25 because I know that my project manager, Mr. Reede,

1 has a couple of additional comments concerning
2 some concerns from a couple of the other parties.
3 And I don't know whether that would change the
4 bottomline. So I'd like to let him speak to that.

5 HEARING OFFICER SHEAN: Okay. Is he
6 speaking for them or --

7 MR. ABELSON: No, I think --

8 HEARING OFFICER SHEAN: -- do they get
9 to --

10 MR. REEDE: I'm speaking for staff.

11 HEARING OFFICER SHEAN: Okay.

12 MR. REEDE: Okay. We had worked very
13 closely with the other parties attempting to
14 resolve all of the visual issues. And because of
15 the holiday confusion during a two-week period,
16 apparently there were small additions that the
17 City of Manhattan Beach had requested to VIS-2,
18 paragraph 2.

19 And I've since, I've been made aware of
20 them, I have spoken with siting division
21 management. And we have no problem adding those
22 words to it.

23 We had discussed the issue and staff, on
24 December 30th, documented a number of digital
25 photosimulations showing the plant screening,

1 showing the visual corridors and the like. And
2 did you receive copies of this? Is this what
3 you're asking for in here? In this condition?

4 MS. JESTER: No. What we're asking for
5 here is similar to what you have in VIS-4, which
6 would be a graphic documentation of the proposed
7 landscape plan.

8 What we have here, my understanding, is
9 what was presented at the December 18th workshop
10 that showed sort of a --

11 MR. REEDE: Now I understand --

12 MS. JESTER: -- conceptual idea --

13 MR. REEDE: -- what you're asking. With
14 staff accepting this additional language, and with
15 your indulgence, if I could read it to the
16 parties, --

17 MS. JESTER: I have 20 copies here if
18 you'd like --

19 MR. REEDE: Oh, okay, well, if you could
20 pass it out I don't need to read it to people.

21 MS. JESTER: It's the language that's
22 shown in blue. The green is language that Energy
23 Commission Staff added and is already put in.

24 MR. REEDE: But with the Commission's
25 acceptance of it, and if the applicant accepts it,

1 then all of the visual conditions are agreed to.
2 And I think -- to the best of my knowledge, all
3 the visual conditions are agreed to.

4 The City of El Segundo had a comment in
5 their prehearing conference statement, but again,
6 because of Christmas vacations and the like, they
7 did not get the final language, which they had
8 input to and they now agree with the fact that
9 this is what everybody can agree to.

10 And it's only the blue language. The
11 way it reads right now is paragraph B, graphic
12 documentation on the plan of bay view corridors,
13 which would exist from Vista del Mar after project
14 construction and.

15 The addition is graphic documentation on
16 the plan and through digital photosimulations of
17 bay view corridors and power plant screening,
18 which would exist from Vista del Mar and the
19 residential area east of Highland that has views
20 of the project site.

21 Staff has no problem with that. And so
22 we would need agreement from the applicant and the
23 other parties. And visual, as you say, would have
24 a final presentation at the evidentiary hearings.

25 MR. MCKINSEY: The applicant would say

1 that we've already kind of stated our okay. I'd
2 like to hear from the key parties of the City of
3 El Segundo and the Murphy/Perkins party that this
4 is an issue that they're making regarding those
5 conditions. They'd certainly be acceptable to us,
6 but those are the parties that really need to
7 speak on it.

8 MR. GARRY: This is Paul Garry, El
9 Segundo. Our letter had some discussion about
10 some concern about some of the language in VIS-2,
11 but James pointed out to me that some of the new
12 language, what I thought was new, was actually
13 moved from another part of the condition and
14 enhanced somewhat.

15 So El Segundo is satisfied with the
16 screening language that's been added to VIS-2 at
17 this point.

18 MR. PERKINS: Several of the residents,
19 and at least two intervening groups of residents,
20 the Nikelsons and ourselves, have some concerns in
21 this area. And it's odd because I think that
22 there is agreement on an appropriate language for
23 the condition, although the new blue stuff may
24 change that, probably not. I need to think about
25 that a little bit.

1 But, the odd thing is that the
2 conditions, the reason we agreed to them is that
3 they set up a process for determining what the
4 thing would look like. As we told the staff
5 emphatically at the last workshop, these pictures
6 they're providing are not what we think it should
7 look like. They're wrong. We disagree. They
8 shouldn't be part of the condition. The opposite
9 should happen.

10 And the reason we want to present
11 testimony at the hearing is to show the Commission
12 our views, our opinions about how the thing ought
13 to look and what ought to be done.

14 And I'll just mention a couple of
15 specifics. It's been long -- for a long time
16 we've had, and we have it in the FSA, a picture of
17 what the 45th Street berm is supposed to look
18 like. But the most recently provided blueprints,
19 which I guess is what Mr. Reede is talking about
20 incorporating, say not that those pictures will be
21 what it's going to look like, but that there will
22 be low spreading shrubs at the upper part of the
23 berm and sloped groundcover at the bottom part.

24 Well, I mean, that's wrong. That's just
25 not what everybody agreed to.

1 And the issue of bay views or screening
2 on Vista del Mar, there was a sharp divergence of
3 opinion at the workshop. The staff's people, Mr.
4 Kalimoto and Mr. Knight, strongly believe that it
5 was best to have us all look at the power plant
6 from Visa del Mar because we could see the ocean
7 behind it, with some screening.

8 The residents all said, at least in the
9 southern part of the plant property where the
10 residents are affected more than -- it's mostly
11 drivers on the north end, and mostly residents on
12 the south end -- at least on the south end the
13 residents were saying, gosh, you know, we don't
14 want to look at the power plant. We understand
15 that trees will block a little ocean, too, but we
16 want to have screening.

17 And so these pictures show open site
18 lines on the north end. They aren't what we want.
19 And we don't understand they'll be part of the
20 conditions. So we're ready to agree to the
21 condition, but we want a process where we can
22 bring our opinions to what it ought to look like
23 before the applicable people, either the
24 Commission, itself, or the people it appoints to
25 work through the landscape plan, and we certainly

1 don't want to have any impression that we agree to
2 these landscape plans.

3 This is what we told them --

4 MR. REEDE: No, this --

5 MR. PERKINS: -- repeatedly we don't
6 like. That's all, --

7 HEARING OFFICER SHEAN: All right, --

8 MR. PERKINS: -- and that's why you see
9 it in our -- even though we believe we've agreed
10 to all the conditions, that's why you see a
11 request to call witnesses for testimony on this
12 issue before you. If it shouldn't be before you,
13 it should be before someone else, that's okay with
14 us. But we think, you know, we don't want any
15 confusion that we've bought into a visual concept
16 that the staff likes, but the residents don't.

17 HEARING OFFICER SHEAN: Okay, let's go
18 to the City of Manhattan Beach and see if they
19 have a view on this. And then Mr. Nickelson. And
20 then we'll have everyone --

21 MR. REEDE: But there's some
22 clarification needed.

23 HEARING OFFICER SHEAN: Yes, but I want
24 to know what their position is first. Go ahead.

25 MS. JESTER: I think what I would like

1 to clarify is that what was presented at the
2 workshop, in my opinion, my understanding, was a
3 concept plan. Here are potential view corridors,
4 potential screening areas, potential low
5 landscape, potentially high landscape, just to
6 give us an idea of what the possibilities were.

7 And then my understanding is the
8 applicant would prepare, in accordance with the
9 conditions of certification, a final landscape
10 plan. And that could be reviewed by the City of
11 Manhattan Beach, City of El Segundo and, of
12 course, we would consult with the residents to get
13 their input.

14 And the language that we added then sort
15 of goes one step further and says, well, a plan on
16 paper is one thing, but we would like to see
17 graphic documentation so we really see what it
18 looks like. You know, take this plan and do, just
19 like you did with the 45th Street berm, so we can
20 see what it looks like. And not only from Vista
21 del Mar, but being sensitive to the people that
22 are above, such as Mr. Nickelson, that look down
23 on the plant, and what are they going to see when
24 they look down on it.

25 So that's what the blue language adds,

1 and that's our understanding of how this condition
2 would work.

3 MR. REEDE: The clarification that's
4 needed is this was staff's presentation at the
5 workshop. This is not part of the condition.
6 This is not part of the condition.

7 The language in the condition allows for
8 development of documents similar to this that
9 would be reviewed and commented on by both the
10 City of Manhattan Beach and the City of El
11 Segundo.

12 And as Ms. Jester just stated, she's
13 going to have citizen participation from the City
14 of Manhattan Beach on what their comments are, and
15 what their suggestions are.

16 So, this is not part of the condition.
17 We made a presentation as to what stuff might look
18 like, not what stuff would be. The applicant has
19 to put together the landscape concept plan.

20 MR. MCKINSEY: Can I --

21 HEARING OFFICER SHEAN: Um-hum.

22 MR. MCKINSEY: Mr. Perkins' point is
23 well made, and this is what we had acknowledged at
24 the December 18th workshop. That the most recent
25 landscape concept plan was quite old. And since

1 then we had added a landscape berm.

2 And we had also agreed to some changes
3 in VIS-2, which weren't reflected in the landscape
4 concept plan. There's a difference between --
5 VIS-2 calls for a landscape plan that has to be
6 submitted as part of the development process. But
7 obviously there has to be some frame of reference
8 if everybody's going to be commenting on whether
9 or not our landscape plan correctly reflects what
10 it should reflect.

11 There ought to be something that makes
12 it real easy for them to say to the compliance
13 project manager, wait, they forgot the berm in the
14 south end, or the tree structure is wrong.

15 Now, I think also part of Mr. Perkins'
16 comments, this doesn't completely address them,
17 but as to that, we had committed to completing a
18 landscape concept plan. And it came off the
19 presses last night. I brought the only copy I
20 have right now, but we're printing it out and
21 we're distributing it to all the parties literally
22 probably as we speak, or tomorrow.

23 And it is what I reiterated that we
24 would add to the landscape concept plan is we
25 overlaid the berm, that we had proposed and was

1 agreed upon, onto the landscape concept plan. And
2 we changed, we added dialogue boxes as you go
3 around the landscape concept plan, you know, the
4 point-outs for the berm, point out what's on the
5 berm; the point-outs in the southwest corner,
6 specifically state the fence is set back three
7 feet, there are benches there.

8 The call-outs along Vista del Mar,
9 however, there's still a lurking issue in here
10 that I don't think we've all addressed that Mr.
11 Perkins is making, and that has to do with the
12 condition VIS-2 simply says, we're going to let
13 this work out as part of the landscape plan in
14 terms of how we're going to balance maintaining
15 view corridors and screening along Vista del Mar.

16 And so what we put in the landscape
17 concept plan is that language from VIS-2. And I'd
18 like to read one of the points on the area that's
19 pointing directly above the center of the three
20 tanks on Vista del Mar.

21 It says: New vegetation on the eastern
22 border will balance view corridors to the ocean,
23 with the screening of the facility as in the
24 approved landscape plan. Landscape planning will
25 be complimentary to vegetation along the Chevron

1 property.

2 So it's citing the language from VIS-2.

3 And so what it's saying is the final preservation
4 will be what's accomplished in VIS-2 when we
5 submit a landscape concept plan and the various
6 parties have the ability to articulate it.

7 And I don't think that it would be fair
8 for Mr. Perkins to settle it right now because he
9 hasn't really seen this document. But that may
10 partly resolve some or all of his visual issues.
11 It's a piece of the pie that we didn't get
12 completed over the Christmas holidays, and that
13 we're just now finishing, that I think is what
14 he's talking about. Is we got a condition that
15 says you're going to figure all this stuff out,
16 and you're going to balance these things.

17 But there's nothing that's putting it in
18 stone that gives a reference point when the
19 parties are evaluating the landscape concept plan
20 in the future and saying did you or did you not do
21 it. Right now they would have to go back to a lot
22 of material.

23 And now, at least in one place there's a
24 specific document. And, of course, in the
25 condition, in the decision normally the decision

1 would cite, you know, some of that specific
2 information, as well. But we realize there needed
3 to be some kind of centralized document that has
4 the key features that are supposed to be in it.

5 HEARING OFFICER SHEAN: Well, let me
6 ask, because at least from the Committee
7 perspective and historically, there's always been
8 an issue are we being prescriptive or
9 proscriptive. And if we have a process which has
10 a significant element of local input, which I
11 think for visual resources is utterly appropriate,
12 Sacramento should not be dictating the aesthetic
13 preferences of the local community.

14 You know your environment; you live in
15 it from day to day. And to the extent that it's
16 possible it should be tailored, whatever is being
17 done is being tailored to the needs and tastes of
18 the local community.

19 What tends to happen, then, of course,
20 is people say, well, I'd like to see this. Okay.
21 I don't want this kind of tree, I want this kind
22 of tree. I don't want this kind of fence with
23 this fabric, I want this. And it tends to move
24 from prescriptive to proscriptive, where you're
25 dictating down to color swatches and this sort of

1 thing.

2 And we'd like to avoid that generally
3 because we think a participatory process that gets
4 it done outside of a hearing process is far and
5 away the better answer.

6 The next thing then is do we have enough
7 guiding principles or guidance from the Commission
8 to the CPM, and potentially even the Commission,
9 itself, if there's an appeal of the plan, to know
10 what it was that we intended.

11 And I guess that's the thing that the
12 Committee will look to the local jurisdictions,
13 the two cities, as well as the public members, to
14 learn whether or not you think the conditions that
15 we've written sufficiently set out the guidance
16 that would be needed in order to have a process
17 outside of the hearing process, and later, that
18 will come up with the best possible plan.

19 So, I want to give you that orientation
20 of the Committee because I'm not sure that it's
21 going to help to have somebody say, well, I want a
22 Monterey pine versus something else, or that kind
23 of thing. Or, you know, we favor only these
24 indigenous plants, but we recognize that they
25 don't really do the visual screening thing that we

1 want to do.

2 So, I think with that said, why don't we
3 see what sort of presentations people want to make
4 on this visual issue because we want to make sure
5 that the public has had an opportunity to have
6 input on it.

7 MR. ABELSON: The one thing I'd like to
8 suggest, if it isn't implicit in what you just
9 said, is that the fact that there, again, has been
10 a lot of discussion about this. Frankly, I think
11 a lot of movement on everybody's part. I think
12 we're much closer to a consensus, both as to a
13 process, and a general approach.

14 But, for example, Mr. McKinsey has just
15 mentioned that there's a new concept plan or a
16 version of it that's been drafted. I really think
17 it will help everyone and help the hearing process
18 if we can get, once again, what I call a true-up
19 of where we're at. A narrative is a word that
20 John has used in earlier issues.

21 So that parties can look at that from
22 the applicant, one last time. It's not so much
23 the conditions because the conditions, as Ms.
24 Jester said a moment ago, or Mr. Perkins said, are
25 largely agreed to. But, what the kind of the

1 context in which those conditions are relevant,
2 how that came about, and sort of what we've all
3 kind of laid out as the process probably needs to
4 be articulated.

5 And then all the parties, including
6 staff, can indicate yes, that's what we thought we
7 were doing, or here's the problem, notwithstanding
8 the condition, given the narrative that we've just
9 seen.

10 So I would ask once again on this topic,
11 because it is a topic that's been sensitive, and
12 it is a topic of considerable concern to the
13 community, to intervenors, that we try to get a
14 written true-up before we get to hearings.

15 PRESIDING MEMBER PERNELL: Let me ask a
16 question as it relates to the community. Are
17 there -- scratch that. How do you know what the
18 community wants. Are you having community
19 meetings? Are you -- when you say you're
20 representing the community, is that -- what are we
21 talking about?

22 MS. JESTER: Yes, we meet with the
23 community, basically invite the residents, the
24 intervenors that have been involved. And --

25 PRESIDING MEMBER PERNELL: Has it been

1 well attended?

2 MS. JESTER: Well, all of the
3 intervenors have had input. As far as at the
4 onset of the project we, as a city, sent notices
5 on I believe three occasions all the way to
6 Rosecrans. It was a couple thousand people that
7 we notified of the hearings. And people that have
8 continued to be involved through this two-year
9 process have been the people that you see here,
10 plus Elsie and Lyle.

11 HEARING OFFICER SHEAN: All right, well,
12 I can just say it seems to me from reading the
13 conditions, that while there's a lot of processing
14 there, while there's a lot of qualifications about
15 the people who are going to be helping to prepare
16 it, and while there's discussion about having
17 graphic documentation of what it will look like,
18 it's short of or short on sort of the guidance as
19 to what's needed.

20 Because it seems to me, at least as I'm
21 understanding what has been said so far, the
22 things that would concern, or at least the issues
23 regarding motorists and their views on Vista del
24 Mar is a different issue from the residents who
25 live on 45th in the block below Vista del Mar, or,

1 you know, I know it changes names. And then there
2 are considerations for the people uphill of that.

3 And I think there's no recitation
4 somewhere of what of the guidance that each of
5 these three areas, probably has different
6 considerations, and that the Committee has heard
7 from the public, heard from the local
8 jurisdictions, and the staff -- and, you know, I
9 guess it's going to be up to us then to sort of
10 enunciate those principles.

11 And I guess what we would like to do is
12 to have the participants in the hearing mindful.
13 That's one of the things we want to do. We'd
14 rather do that than say, you know, you're going to
15 use a particular species of plant.

16 So I think what we're going to do at
17 this point, we have a specific request from
18 Murphy/ Perkins on visual to make a presentation.
19 And probably -- I don't know. Do you have
20 something further that you think you can state
21 with respect to your representation of your
22 community as to these sorts of guiding principles
23 that would aid the Committee in trying to lay
24 those out?

25 MS. JESTER: I think your statement was

1 very clear. It is a balance between, you know,
2 the residents on 45th, the residents above
3 Highland and the motorists. And I think having
4 this landscape concept plan that incorporates
5 everything that's been discussed may assist with
6 that.

7 HEARING OFFICER SHEAN: Okay. Then what
8 we'll do is have the applicant prepare their
9 material and present it. We're going to leave you
10 with the opportunity to cross-examine. You're
11 showing the staff witness as the one you were
12 requesting. Is that still your request, or do you
13 want it to be the applicant's people, or both?

14 MR. PERKINS: Well, actually --

15 HEARING OFFICER SHEAN: Or do you think
16 that's necessary? If you want to just make a
17 direct presentation --

18 MR. PERKINS: -- think the applicant --

19 HEARING OFFICER SHEAN: -- of your
20 own --

21 MR. PERKINS: I'm hesitating and
22 fumbling here because it's a little unclear about
23 where and when it's necessary for us to take up
24 time with this issue.

25 We have agreed, all of the party

1 residents, the Cripes, Nickelsons, myself have
2 formally agreed to the language in the conditions,
3 with the exception of the new blue language. And
4 I'm prepared to agree to that, with the -- and it
5 helps me with the clarification we got from Mr.
6 Reede and from Mr. McKinsey that nobody thinks
7 that the staff's position is thereby -- that is
8 on, for example, Vista del Mar screening plantings
9 and the pictures that they've submitted, are
10 therefore the pictures. That there's going to be
11 an additional landscape plan. That staff's views
12 will be considered, but so will those of any
13 residents that want to come forward.

14 And so my question kind of how to best
15 use your time and mine -- I'm more interested in
16 mine, but you ought to be more interested in
17 yours -- my question about that is if you're not
18 the folks who are going to say, well, plant it
19 here and do the species list there, then why
20 should I waste your time listening to what I think
21 would be right in the way of the species list. Or
22 what the City's gardener will say is what to use
23 to be compatible with the rest of the world.

24 That's a guideline; they have to, under
25 the law, be compatible with the adjoining kinds of

1 plantings. Well, we can present that evidence to
2 you, but if you're not the guys that will do that,
3 if that's got to come out of a later process, this
4 process looks okay to me.

5 And the only guidance I would ask is
6 that the -- only further guidance, and I don't
7 know if it needs to be in a condition at all, is
8 that the -- in a condition at all -- is that the
9 Commission tell the CPM, hey, you know, listen to
10 the City of Manhattan Beach. They don't have to
11 hear from me at all. The City of Manhattan Beach
12 will speak to me and to the 25 or 50 or however
13 many residents that are actually interested enough
14 to express their opinion.

15 HEARING OFFICER SHEAN: Right, and if we
16 say listen to them, what standards does the CPM
17 use to know whether or not, you know, in
18 evaluating the final plan and whether it meets the
19 goals of the Commission, and I think that's, in a
20 certain sense, as I look at this, we may end up
21 with a standardless standard that says, file a
22 good landscape plan.

23 MR. PERKINS: Well, I know you can't
24 cede --

25 HEARING OFFICER SHEAN: Or an acceptable

1 landscape plan. And then the question is how
2 acceptable and to whom. And I guess so --

3 MR. PERKINS: I know you can't cede your
4 authority to the City of El Segundo or the City of
5 Manhattan Beach, but it seems to me you could
6 direct your representative, your spokesperson, the
7 CPM, to, you know, weigh heavily, or try your best
8 within the bounds of the law to comply with,
9 something like that, the requests of the City of
10 El Segundo and the City of Manhattan Beach. Then
11 they could get on the same page, and that they can
12 submit -- then if they can say we both want this
13 to happen out there.

14 And it's only if the CPM decides that he
15 or she doesn't want to do that that we're going to
16 have bickering and complaining and problems of one
17 sort or another.

18 HEARING OFFICER SHEAN: Well, and I
19 think, at least from the Committee perspective,
20 among the things we would look at is if there
21 isn't agreement and the matter goes to some sort
22 of additional hearing, where's the standard to
23 apply. So.

24 MR. ABELSON: If I could just add one
25 thing. I think it's not standardless at the

1 moment, the way the conditions are written. Maybe
2 the true-up would actually add to that and
3 clarification.

4 But basically there is a balancing that
5 needs to go on between trying to fully screen the
6 facility on the one hand, because it's an
7 industrial facility on an otherwise very beautiful
8 site, and the need to protect the very beautiful
9 site that you're trying to enhance to begin with.

10 And there isn't a right answer to that.
11 People will differ about it. And people will have
12 input to it through the various cities, through
13 the intervening process. But that is the
14 standard. There has to be some balance between
15 those somewhat potentially competing objectives.

16 The other piece that I think has been an
17 issue, and is also handled, I think, with some
18 discretion left, is the issue of the type of
19 landscaping specifically that would be done. And
20 I think the way the condition is currently worded,
21 says that, you know, to the extent possible,
22 consistent with the goal of visual screening and
23 preserving views, use native plants or drought-
24 resistant plants, something that would be
25 noninvasive to the extent possible.

1 But, again, I think there's a lot of
2 wiggle room left in there, and a lot of
3 opportunity for parties to weigh in. That's
4 simply the standard, if you want to say. That's
5 the standard, we're trying to use native,
6 nonintrusive plants if we can. But we're also
7 trying to, you know, screen the facility.

8 So I think there are actually some
9 standards, Hearing Officer Shean and Commissioner,
10 that are in the conditions as drafted.

11 HEARING OFFICER SHEAN: Okay, well, I
12 notice under VIS-2, subparagraph 2, I mean there's
13 at least an attempt to do that.

14 MR. ABELSON: Right.

15 HEARING OFFICER SHEAN: Okay, and it may
16 be that in the language that is in textual
17 language, not of the condition, but the decision,
18 we can enhance that so we have something --
19 someone will have something to interpret.

20 Okay. I think what we're going to do
21 then, is the applicant's going to do the
22 narrative. We'll afford an opportunity for
23 Murphy/Perkins to put on a direct and examine the
24 witnesses from the applicant.

25 Anybody else want to be included in

1 that? Okay.

2 MR. NICKELSON: You have me down, don't
3 you, Bob?

4 MR. PERKINS: I have you as a witness,
5 but you should have your own right to present the
6 stuff.

7 MR. NICKELSON: Okay.

8 MR. REEDE: I'd like to ask a question
9 for closure, Commissioner Pernell. I'm
10 understanding now that all the parties are in
11 agreement with the conditions of certification
12 with this added blue language. And I see heads
13 nodding. And I wanted to make sure that that was
14 on the record, if it was, in fact, true that all
15 the visual resources conditions of certification
16 have been agreed to by all the parties as of the
17 submission of the blue language by the City of
18 Manhattan Beach.

19 HEARING OFFICER SHEAN: Okay, that's our
20 understanding. Is that correct? If any other
21 party that's present does not agree to that, you
22 need to say so now.

23 All right, hearing no objection that
24 does represent the final language of VIS-2.

25 MR. NICKELSON: Can I just say

1 something, Commissioner --

2 HEARING OFFICER SHEAN: Certainly, go
3 ahead.

4 MR. NICKELSON: I was really excited at
5 the last workshop with what your staff, you know,
6 presented, you know, the changes and the
7 possibilities that came from that. The only thing
8 we walked away from was one thing, not really
9 knowing, not having something really in our hands
10 to take a look at. And that's one thing that's
11 still missing.

12 But John has, apparently he's got
13 something here. But I don't see that, John, if
14 this is the one piece of paper, it doesn't really
15 give us any kind of an idea if we look at that,
16 what we can expect or what you're presenting or
17 what you're planning.

18 Do you have something other than just
19 that one?

20 MR. MCKINSEY: No. But this was what we
21 had talked about providing. This is big, it's ten
22 feet long and three feet high, and you can see a
23 lot more of the very specific notes and plant
24 choices and contour lines.

25 It agrees with the record as it's been

1 developed. In other words, it agrees we're
2 putting in a berm; it agrees that we need to
3 balance the view corridors; it agrees that there's
4 a three-foot setback here, there's benches there.

5 So I think it will provide the means for
6 parties to say, hey, you missed something, or we
7 disagree with part of it, or, yeah, that provides
8 it.

9 But there are renderings in the record
10 of the facility and what it's going to look like.
11 The one thing that's not in the record, and it's
12 Mr. Perkins' third comment in his prehearing
13 conference statement, regarding the opportunity to
14 do more creative, artistic work on the plant.

15 But in terms of everything else we've
16 got established views of the project. The view
17 corridor along Vista del Mar isn't in the record
18 because that's the piece that we're leaving to be
19 balanced and determined later.

20 So the record has most of it; the point
21 of the narrative is to describe, you know, that
22 this is what happened. We agreed to have a berm;
23 we agreed to setback the fence, put benches here.
24 And kind of give a narrative of the sequence of
25 what's out there and in the record.

1 That also provides the means for the
2 Committee, I think, to cite those things. But,
3 we're providing this because we've committed to
4 it. And then we're planning on providing a
5 narrative, which is going to be textual in
6 describing how this came about, and whatever else
7 there is there to be developed for visual
8 purposes. The discussion of units 3 and 4, when
9 we provided that, you know, the architectural
10 treatment, et cetera. The additional trees being
11 located on the whole perimeter. So.

12 HEARING OFFICER SHEAN: Okay.

13 MR. NICKELSON: Those were the
14 additional, those were the 40 trees that you took
15 out of the tank farm area, then?

16 MR. McKINSEY: Yeah, it's --

17 MR. PERKINS: Is what you're proposing
18 in addition, is there more to what you're
19 proposing than just taking the 40 trees and that's
20 it, scattering them around?

21 MR. McKINSEY: I don't recall the number
22 of trees. What we had is a commitment to provide
23 at least the amount of trees that would have
24 otherwise been planted in the paved tank farm area
25 if it had been a vehicle use area. And those are

1 being used on the perimeter.

2 And that was being driven by the City of
3 El Segundo's request. And that's what we agreed
4 to incorporate into the perimeters, additional
5 trees. I don't know what the number is offhand.
6 Or if there's a -- I think there's a minimum
7 number, but I think it's well met.

8 MR. PERKINS: Is there anything in
9 addition to the 40 trees? That, the 40 tree is
10 the number that I recall, but --

11 MR. MCKINSEY: Yeah, I don't know what
12 the -- I don't remember exactly how we articulated
13 the number of trees.

14 PRESIDING MEMBER PERNELL: All right.

15 MR. PERKINS: Thanks --

16 PRESIDING MEMBER PERNELL: Yes.

17 MR. PERKINS: -- sorry to hold you up
18 again. Thanks to Mr. McKinsey for reminding me.
19 A gentleman named, I think his first name is Mark
20 Beam made a presentation -- was it at the workshop
21 or at the last prehearing conference workshop --

22 MR. REEDE: Workshop.

23 MR. PERKINS: -- and was invited to
24 attend today. I don't know if he's here or not.
25 But his position is all visual and it's dramatic.

1 Some will like it, some won't.

2 And, yes, it is listed in our prehearing
3 statement as being something that perhaps the
4 Committee ought to look at, and if Mr. Beam's
5 here, maybe he ought to talk about it. If he's
6 not here, then I have nothing further to say on
7 that at the time.

8 MR. REEDE: Commissioner Pernell and
9 Hearing Officer Shean, I will docket an email that
10 I received from Mr. Mark Beam, B-e-a-m, who's an
11 artist sculpture. And he sent us an email of a
12 jpeg file of a proposed rendering of the plant
13 that is at least avant garde in the line of the
14 Rendondo Beach plant, with the whales and stuff.
15 He's proposed a couple of different ideas. And
16 I'll forward those on.

17 HEARING OFFICER SHEAN: Okay.

18 MR. NICKELSON: Mr. Commissioner, I'd
19 like to be added, I'd like to be able to speak to
20 this at the hearing.

21 HEARING OFFICER SHEAN: To visual?

22 MR. NICKELSON: The visual, yes.
23 Because I mean I still don't have an idea what is
24 being presented by the applicant, you know, and
25 I'm not going to -- I don't know until I see

1 something, you know, if I'm going to be satisfied
2 with it. And I'd like to be able to speak further
3 about that.

4 HEARING OFFICER SHEAN: Okay.

5 MS. JESTER: I wanted to get some
6 clarification with this landscape concept plan as
7 submitted by the applicant. You say it's being
8 submitted now.

9 Does that fall in the same timeframe
10 where we have 21 days to review and comment on it?
11 Or is that -- I mean what if you submit that and
12 we see and say, oh, no, you forgot, we agreed to
13 do such-and-such on the berm, or --

14 MR. MCKINSEY: I can say this, that
15 we're going to submit -- the landscape concept
16 plan we're going to submit right away. We've also
17 committed to providing a narrative that summarizes
18 all that occurred within the workout of the visual
19 conditions that resolved parties' concerns.

20 And that's a form of testimony. But, I
21 mean it's -- so obviously I don't know what the
22 schedule's going to be like, but that's what we
23 committed to providing.

24 HEARING OFFICER SHEAN: I guess my
25 answer to that is if the conditions establish a

1 process outside of the hearing format for dealing
2 with the specifics, then that should be where
3 those are mostly addressed.

4 However, if when you see whatever you
5 see from the applicant you say we don't -- we
6 didn't see what we thought we'd see in the
7 following respect. That, at least, is going to
8 give the Committee an idea of what guidance this
9 entire process needs.

10 So, I think what I've got now is an
11 opportunity for lots of people to ask questions
12 with respect to the visual issues, the narrative,
13 or make comments with respect to that.

14 MS. JESTER: We would like to reserve
15 that right to make comments.

16 HEARING OFFICER SHEAN: Okay.

17 MS. JESTER: Thank you.

18 HEARING OFFICER SHEAN: All right, I
19 think that's going to take care of visual, then.

20 Public health. I had in mind that that
21 was incorporated in our air quality discussion.
22 Is there a desire of any party to do something
23 essentially more separate on public health?

24 MR. PERKINS: Air quality and public
25 health are tightly intertwined in our view,

1 possibly because my wife is currently dealing with
2 a relative with lung cancer and COPD. So we're
3 very concerned about what air quality does to
4 people's health and we think it also ripples over
5 into property values.

6 I don't know that it needs to be, other
7 than that issue, I don't know of another public
8 health issue that concerns either my wife and
9 myself, or for that matter, I don't know of one
10 that concerns any other party, but I'll defer to
11 them.

12 HEARING OFFICER SHEAN: Okay. Well,
13 unless a party so states, we will address the
14 public health/air quality aspects as the topic for
15 the hearing.

16 Okay, then we move down to
17 socioeconomic. And what I'm showing is largely
18 from the City of Manhattan Beach with respect to
19 temporary lodging and property values, is that
20 correct?

21 MR. WADDEN: This is Bob Wadden, again,
22 for Manhattan Beach. I think we would defer to
23 the residents on this. We would reserve our right
24 to cross-examine any witnesses that are produced
25 at the evidentiary hearing. But we will not be

1 presenting any evidence or any witnesses of our
2 own.

3 And we simply would support the
4 residents in their positions on this matter.

5 HEARING OFFICER SHEAN: All right.
6 Well, I'm also showing Murphy/Perkins requested
7 cross-examining the staff witness, is that
8 correct?

9 MR. PERKINS: That is correct, we did.
10 And we specified the legal issue, which is a
11 pollution-based issue. We would expect the
12 evidence to show that pollution can reduce
13 property values and, in fact, does in El Segundo
14 and the north end of Manhattan Beach, as well
15 as -- people, it can make people sick and/or die,
16 which statistically it does in the cities of El
17 Segundo and the north end of Manhattan Beach.

18 And our position is that okay, if you'd
19 do that kind of damage, there should be
20 compensation whether it's considered a
21 governmental taking or private nuisance or
22 whatever. So that is why we want to comment.

23 HEARING OFFICER SHEAN: Okay. We will
24 show then that cross-examination of the staff's
25 witness. Now, I think understanding the staff

1 witness is going to be probably Amanda Stennick,
2 is that right?

3 MR. REEDE: Michael Fajans and Amanda
4 Stennick.

5 HEARING OFFICER SHEAN: Okay. And
6 they're not public health experts, so to the
7 extent, Mr. Murphy, you've got -- they may be able
8 to take into account public health impacts on
9 property values, --

10 MR. REEDE: We would present the writer
11 of the public health section --

12 HEARING OFFICER SHEAN: Okay.

13 MR. REEDE: -- to discuss public health.
14 Amanda Stennick and Michael Fajans are limited in
15 their expertise to socioeconomic issues.

16 And we would not venture to allow them
17 to testify on issues which they do not possess the
18 necessary expertise.

19 HEARING OFFICER SHEAN: All right.
20 Applicant, you don't have a presentation on this?

21 MR. MCKINSEY: No.

22 HEARING OFFICER SHEAN: Okay.

23 MR. PERKINS: My only concern about that
24 comment is that Amanda Fajans (sic) and Amanda
25 Stennick have, in fact, testified if you consider

1 the FSA to be testimony on that issue. And that's
2 why I listed them.

3 HEARING OFFICER SHEAN: Okay, that's
4 fine. We got it.

5 MR. REEDE: On socioeconomics, yes.
6 Property values, yes. But not public health. And
7 that was my point.

8 MR. PERKINS: Okay, --

9 HEARING OFFICER SHEAN: Yeah.

10 MR. PERKINS: -- I understand.
11 Understand that.

12 HEARING OFFICER SHEAN: I think we've
13 got that. All right.

14 Anyone else other than Murphy/Perkins on
15 this? All right.

16 Land use. The issues we have related to
17 the staging and laydown areas, and the acre and a
18 half of public use area was requested by the City
19 of El Segundo.

20 First of all, I guess, if I understand
21 correctly, you have an amended -- do you have some
22 amended testimony with respect to the --

23 MR. REEDE: Yes, Commissioner Pernell
24 and Hearing Officer Shean, on January the 6th
25 staff filed a document, second response to

1 comments and errata to the final staff assessment.

2 In the original errata, as directed by
3 the Committee, staff combined land use 1, 2 and 3
4 into one document. That required a renumbering of
5 the land use conditions of certification.

6 On December 16th the applicant filed
7 additional information regarding offsite staging
8 and parking. And our staff, during the December
9 18th workshop, went out and took pictures,
10 reviewed all the information that the applicant
11 had provided us for accuracy. They found it to be
12 accurate, and they consequently revised what used
13 to be land use-4, which is now land use-2. And we
14 have submitted it into the record.

15 The City of El Segundo made a specific
16 comment; and staff concurred with the City's
17 concern regarding the project's parking and
18 staging laydown area. That it needed to be
19 consistent with whichever local jurisdiction's
20 general plan designation and zoning district.

21 And we have analyzed that, as required
22 under CEQA, and we drafted an appropriate
23 condition. I don't know whether Mr. Garry got it?
24 Yeah, he got it electronically. So whether he
25 agrees with it now or not is the question.

1 PRESIDING MEMBER PERNELL: Committee's
2 going to find out in a minute.

3 HEARING OFFICER SHEAN: Okay, Mr. Garry,
4 do you have the view of the City of El Segundo
5 here on this?

6 MR. GARRY: Yes. I received the list of
7 the offsite staging areas and our comments were
8 that it seems like it's the Commission's and the
9 Committee's responsibility to make sure that the
10 CEC Staff provides a sufficient analysis of the
11 consistency of the use of the staging areas with
12 respect to the zoning and general plans of the
13 various areas.

14 In the list that's provided it merely
15 states where the location is and what the general
16 plan and zoning are for those sites. But doesn't
17 really provide a discussion of how the uses are
18 consistent with those designations. And I think
19 that's what the Committee should be interested in
20 reading.

21 And it's not so much what El Segundo
22 thinks about whether or not these are consistent
23 uses or the other jurisdictions; it's whether or
24 not the Committee thinks that they are consistent.
25 My looking at the response provided by staff

1 doesn't provide that analysis that I thought that
2 the Committee was requesting. It just lists the
3 actual locations and their zoning.

4 So it's more, I believe, up to, you
5 know, the Committee's review of that information.

6 HEARING OFFICER SHEAN: Well, are there
7 any red flags that you've seen?

8 MR. GARRY: With respect to the two
9 sites in -- I think it's just -- well, three sites
10 in El Segundo, the use of the Federal Express
11 property, which is zoned corporate campus specific
12 plan, is a commercial/retail and some light
13 industrial zoning. It's a vacant lot at the
14 moment.

15 But, you know, as I say, the staff
16 didn't provide a consistency analysis. And I'd
17 prefer to see their analysis to comment on that,
18 to making my own, whether it's consistent or not.
19 It's the staff's responsibility to do that
20 analysis, I believe.

21 PRESIDING MEMBER PERNELL: So that
22 there's --

23 MR. REEDE: Well, I --

24 PRESIDING MEMBER PERNELL: Excuse me.
25 You're saying that that lot is zoned light

1 commercial --

2 MR. GARRY: It's zoned commercially as
3 retail use and office uses, but it does allow
4 light industrial uses with a discretionary permit.
5 It does not allow heavy industrial uses. And I
6 guess it would be used here for parking and
7 storage of equipment. That's --

8 PRESIDING MEMBER PERNELL: You think
9 that's heavy industrial? Parking and storage of
10 equipment?

11 MR. GARRY: It's more of a storage,
12 which is generally more of a heavier industrial
13 than a light industrial commercial use. It's not
14 as consistent with the uses as some of the other
15 properties might be more consistent with the
16 proposed use than that one.

17 HEARING OFFICER SHEAN: So at this point
18 the City of El Segundo is not looking at making a
19 direct presentation, but what you're saying is we
20 should look to the staff to conduct a further
21 analysis than what you see here, is that what
22 you're suggesting?

23 MR. GARRY: Yes, that would be my
24 recommendation.

25 HEARING OFFICER SHEAN: And that --

1 MR. GARRY: That without that how can
2 you --

3 HEARING OFFICER SHEAN: Well, let me --
4 I would just say typically what would ordinarily
5 happen is once we get an application our people
6 would go to the city and say, here it is, give us
7 your first read, sort of a prima facie level of
8 up, down. Tell us that.

9 Are you capable of doing that? If not
10 today, at the time of the hearings?

11 MR. GARRY: Yes, I think we can do that.

12 MR. ABELSON: In fact, Mr. Shean, I was
13 going to suggest that this is again one of these
14 issues I think that there's been a little bit of
15 sort of catching up with the ball.

16 I have mostly caught up, we're not quite
17 there. And I think this true-up that we keep
18 talking about could be very helpful on that
19 because it would afford the City the opportunity.
20 We typically give -- our regulations requires to
21 give due deference to the local jurisdictions of
22 question.

23 So obviously clearly listing the
24 relevant rules; clearly listing the relevant
25 laydown areas; clearly getting input from the

1 City, preferably in writing, I think, ahead of
2 time so that we simply know what their view is,
3 will allow everybody to know whether or not
4 there's an issue of dispute at the hearing.

5 PRESIDING MEMBER PERNELL: Well, but, I
6 mean this case has been going on for two years.

7 HEARING OFFICER SHEAN: Well, and the
8 other thing, too, is you had an opportunity to do
9 it in this writing and it's apparently not here.
10 So, maybe we should --

11 MR. MCKINSEY: The document that we
12 submitted in December was intended to address this
13 one remaining issue. And if I hear anything, what
14 I think I'm hearing is that the City of El Segundo
15 disagrees with the staff as to the use of the
16 FedEx site. And that's the only disagreement in
17 the entire issue.

18 A lot of the land conditions we wouldn't
19 be that comfortable trying to do a true-up because
20 I think they reflect more of the staff's work, in
21 that we've commented on the land conditions, I
22 don't think that we've really tried to implement
23 them. The staff has done a tremendous amount of
24 the work in the land conditions.

25 I can say that if the City of El Segundo

1 has an issue with the use of the FedEx site, in
2 all probability we're not going to use the FedEx
3 site for those uses. And so that may really make
4 this a moot issue. We don't need to have the
5 FedEx site. I think we've been told for awhile
6 now that it's probably not going to become
7 available for our use.

8 But if the City of El Segundo is
9 comfortable with the land conditions, as they're
10 written, and the document issued on December, we
11 don't need to do anything else. But I can also
12 state that we can just withdraw the FedEx site as
13 one of the potential staging and laydown areas.

14 HEARING OFFICER SHEAN: Well, here's a
15 choice. It's your burden of proof. If you want
16 to have it on your list and available, then you
17 would need to present us something, or the record
18 would need to contain, at this point, since the
19 staff has not done it, something that indicates
20 that either the FedEx site does conform; or if it
21 would require a conditional use permit, that the
22 facts that would support a conditional use permit
23 exist.

24 MR. McKINSEY: Okay, well, then we would
25 rather avoid that issue by withdrawing the FedEx

1 site. And we can do that.

2 HEARING OFFICER SHEAN: All right.

3 MR. MCKINSEY: And then I don't think
4 there needs to be an issue over whether it needs a
5 conditional use permit or not.

6 Does that satisfy to the City of El
7 Segundo?

8 MR. GARRY: Yes, because I think the
9 other site, which we call typically the Kramer
10 site, which is zoned light industrial, would be
11 consistent with what you're proposing to do there.

12 MR. ABELSON: And all I was looking for
13 in the -- was just that if there is an adjustment
14 and then the applicant believes, based on
15 everything it knows, and with that adjustment
16 we're now in compliance with local LORS, I think
17 staff would probably concur and at least the City
18 would be in a clear position to say no, and here's
19 the ones that we still disagree with, or yeah, we
20 agree to it.

21 HEARING OFFICER SHEAN: All right, so as
22 far as the City's concerned now, is there a need
23 to have a hearing on the parking and laydown
24 sites?

25 MR. GARRY: No, not in El Segundo. I

1 mean, but it's up to you on the rest of the ones
2 in other cities --

3 HEARING OFFICER SHEAN: I know, and --

4 MR. GARRY: -- whether you think they're
5 provided sufficient justification for the
6 consistency. And even with the FedEx site, I mean
7 the City's prepared, if the applicant wanted to,
8 you know, provide the kind of findings that would
9 be necessary, we're perfectly happy to review
10 those if they want to keep those options open for
11 the use of that property.

12 We don't want to, at this point,
13 necessarily say that they should, you know,
14 withdraw that site.

15 HEARING OFFICER SHEAN: Well, that's
16 what they've done. It's out.

17 MR. MCKINSEY: It's out. We withdraw
18 it.

19 HEARING OFFICER SHEAN: Okay. Now, the
20 acre and a half public use area. Is that a matter
21 that the City wants to be heard on?

22 MR. GARRY: At this point it still is.
23 I know that in -- staff provided some additional
24 information primarily related to security issues
25 with the use of that area which was not really of

1 primary concern.

2 Our vital concern is how much area would
3 be publicly accessible at whatever times are
4 publicly allowed. The staff's documentation
5 seemed to say, you know, the beach is closed at
6 certain times of the day. And our previous
7 language had said that the public use area would
8 be open at all times.

9 I think what we're more concerned about
10 is that it not be fenced; that the public use area
11 is publicly accessible. And if those times are
12 limited by other times of the day that other
13 public areas are limited, that's fine. But it's
14 the amount of land that's publicly accessible.
15 Right now it's a three-foot strip along the bike
16 path that's being proposed as an enhancement to
17 the -- for public accessibility. And we don't
18 think that nearly meets the, you know, the kind of
19 the goal of the Warren Alquist Act for enhanced
20 public access. And so we still have an issue with
21 that.

22 And we had proposed condition revised
23 language in our January 11th to reiterate where we
24 stood. And I know people haven't seen that yet,
25 but it kind of restated the language we had

1 previously proposed.

2 MR. REEDE: Commissioner Pernell, staff
3 revised what is now Land-9 which used to be Land-
4 11, but because of the change. Originally the
5 applicant had proposed to donate 1.2 acres of land
6 for public use if they could find somebody to
7 maintain it and operate it. No one wanted to
8 accept it. The applicant basically withdrew that
9 proposal.

10 Staff looked to the Warren Alquist Act
11 and other conditions, and became very
12 uncomfortable in requiring that a specific amount
13 of land, a specific amount of land be required to
14 be donated, because we would then have a public
15 taking.

16 And the language has been worded in this
17 errata to again emphasize that we're not talking
18 about a public taking, which that 1.2 acre minimum
19 would be. We would be hanging out there if we
20 proposed something of that nature in a condition
21 of certification from a legal standpoint.

22 And so what we did was craft language to
23 comply with Warren Alquist, to the letter and the
24 intent of Warren Alquist, by saying that the
25 landscape plan shall show and identify the area to

1 be designated for public use, subject to the new
2 security and safety issues. And also requiring
3 public-type park benches.

4 There is a issue of public taking. And
5 we avoided that out of necessity in compliance
6 with the law. And if they want to argue that, we
7 will basically stand with our condition as
8 modified to include the additional language is now
9 required for security and public safety.

10 MR. ABELSON: The one thing I'd like to
11 add is I think it's been unclear as to whether
12 there are some other options for satisfying the
13 condition. I mean there may be an enhancement of
14 the bike trail; there may be other ways to assure
15 public use.

16 The 1.2 acres was a specific proposal
17 that the applicant, itself, specifically made at
18 one point. Clearly there is a provision that
19 needs to be satisfied. And we have tried to frame
20 it as tightly as we can, given the inability, up
21 to this point, for the City and the applicant to
22 reach something that's a mutual agreement between
23 themselves.

24 HEARING OFFICER SHEAN: Okay, in the
25 absence, apparently, of that mutual agreement, do

1 you want to put on a presentation in terms of what
2 you want and what you want it to be in terms of
3 public access?

4 MR. GARRY: Yes, we do.

5 HEARING OFFICER SHEAN: Okay. And does
6 the applicant want to have an opportunity to
7 address that?

8 MR. MCKINSEY: No, we --

9 HEARING OFFICER SHEAN: -- testimony?

10 MR. MCKINSEY: No.

11 HEARING OFFICER SHEAN: No. So, no
12 direct witness from you, but a direct witness from
13 the City. All right, that's what it will be.

14 All right, facility design.

15 MR. REEDE: Commissioner Pernell, there
16 were three areas in facility design general
17 conditions 6, 8 and 10. Well, 6 and 8, in which
18 the parties agreed with our condition. However,
19 the City of El Segundo wanted additional language.
20 The base language was agreed to, but there was
21 additional language that the City of El Segundo
22 wanted.

23 One, on general condition 6, they want
24 to add language for all inspectors to obtain a
25 local business license; all inspectors that would

1 be brought in by the CBO. Which is basically and
2 extension of the California Energy Commission.

3 We, as staff, rejected that added
4 language.

5 On general condition 8, they wanted to
6 add language for having the final plans on file
7 with their planning department. What we had
8 attempted to explain to the City of El Segundo was
9 that we will retain jurisdiction over that plant
10 until it's turned back into sand.

11 They still wanted a set of the plans.
12 And we attempted to explain that we will not
13 relinquish our jurisdiction.

14 HEARING OFFICER SHEAN: Does their
15 physical possession of a set of blueprints impose
16 in any way upon our jurisdiction?

17 MR. REEDE: Well, a set of as-builts for
18 a power plant would probably stack to the ceiling.
19 And if they do not possess the expertise to
20 interpret those documents, if they do not have the
21 ability to perform useful or efficient work with
22 those documents, that burden, we felt, as
23 Commission Staff, should not be placed on the
24 applicant.

25 HEARING OFFICER SHEAN: Why does the

1 City want them?

2 MR. GARRY: Well, our interest was to
3 facilitate, you know, local people working in the
4 future on the plant who want to get access to the
5 plans to be able to just come in El Segundo.

6 And there was also, at that time we were
7 not made aware, and I think I'm just hearing now
8 finally for the first time that the City of El
9 Segundo at no point in the future would ever be
10 involved with issuing building permits for
11 anything having to do with those units.

12 And if that's the case, that's fine.
13 But, it was never made clear prior to that that we
14 might sometime take over some responsibility after
15 the initial construction.

16 And in my January 3rd letter we dropped
17 our request for that condition; we weren't
18 pursuing that anymore. We still think it's
19 valuable to have the as-built plans on microfilm
20 in our city hall for someone to review if they
21 need to do work on the plant. So they don't have
22 to go to Sacramento to get them. That our local
23 contractor is going to be doing work, but we're
24 not pursuing that modification any more.

25 HEARING OFFICER SHEAN: Okay.

1 MR. REEDE: And we just got the January
2 3rd letter and I have not had a chance to review
3 it.

4 HEARING OFFICER SHEAN: All right, so we
5 can strike that.

6 MR. GARRY: For Gen-8, I think it was.

7 MR. REEDE: Yeah, Gen-8 is now -- I
8 might also add that because of new security
9 concerns, Mr. Glaviano at the Commission, I
10 believe, is sending to the Siting Committee, a
11 request that access to power plant documents will
12 be severely restricted.

13 PRESIDING MEMBER PERNELL: All right,
14 but the issue is off the table now.

15 MR. REEDE: Okay.

16 HEARING OFFICER SHEAN: But the local
17 business license is a matter you want to address?

18 MR. GARRY: Yes. We, in our letter, we
19 tried to provide more of an explanation of why. I
20 mean, first of all, according to our municipal
21 code a business license is required for a special
22 inspector to do work in the City.

23 And as I read Gen-6, it is the CPM's
24 responsibility to make sure that all of the
25 requirements and certificates and documentation is

1 in place for all the special inspectors who need
2 to do work on the plant.

3 And this is just really a notification
4 that one of the things the CPM will make sure is
5 that the special inspectors have in place, or
6 shall obtain, an El Segundo business license.

7 In my mind it's a very simple
8 straightforward condition, a noticing condition
9 for the CPM to make sure that inspectors get a
10 business license as required by LORS.

11 MR. MCKINSEY: May I say something?

12 HEARING OFFICER SHEAN: Sure.

13 MR. CABE: We will make sure in the UPC
14 contract that these issues are fully complied
15 with. It will simply be a condition of
16 employment, a condition of contracting.

17 MR. GARRY: I mean I'd still like to
18 find out if staff is, based on what I've just
19 said, or what, you know, in the letter, if it
20 would make any difference. Because we prefer to
21 see it in the condition, if possible.

22 But I appreciate the applicant's putting
23 forward that. And that would be, you know,
24 acceptable, but still, it is a LORS requirement;
25 they have to have a business license. So I don't

1 see why the CPM can't have something as part of
2 their checklist of things that they need to tell
3 people to go get a business license if you don't
4 have one. Makes it easier than our inspectors
5 running -- our revenue inspectors running around
6 making sure they get a business license.

7 MR. REEDE: As I said before,
8 Commissioner Pernell, the chief building official
9 is under contract, or is an extension of the
10 California Energy Commission.

11 HEARING OFFICER SHEAN: Given the
12 agreement of the applicant, do you want to have an
13 opportunity to present this at the hearing?

14 MR. GARRY: No, I think that would be
15 fine if the applicant's going to make sure that
16 they know about it, so --

17 HEARING OFFICER SHEAN: Now, basically
18 with the agreement of the applicant to provide in
19 the employment contracts that their employees will
20 have an El Segundo City business license. And
21 that we took Gen-8 off, I don't see that there are
22 any facility design issues remaining. Is that the
23 concurrence of the other parties?

24 All right, hearing nothing to the
25 contrary, we'll take facility design off the table

1 then.

2 The last would be on compliance, the
3 milestones issue.

4 MR. REEDE: Excuse me, there's one
5 additional issue that the City of El Segundo had
6 requested, a CBO trailer.

7 MR. GARRY: We --

8 PRESIDING MEMBER PERNELL: What is that?
9 Oh, a CBO trailer.

10 MR. GARRY: We have decided to drop that
11 request, as well.

12 MR. REEDE: Okay, and that's in your
13 January 3rd letter?

14 MR. GARRY: Well, it's not referenced
15 one way or the other, so we didn't pursue it.

16 HEARING OFFICER SHEAN: Well, we're
17 hearing now, so that all the facility design stuff
18 is off the table.

19 Now, compliance.

20 MR. MCKINSEY: We've reviewed the
21 staff's proposal in the compliance area, and we
22 find it acceptable. So we no longer have any
23 issues with the compliance conditions.

24 HEARING OFFICER SHEAN: Okay.

25 MR. ABELSON: And just for the benefit

1 of the Committee --

2 MR. MCKINSEY: With the general
3 conditions.

4 MR. ABELSON: Yeah, just for the benefit
5 of the Committee, if I could just very briefly
6 summarize. We had had a one-year start of
7 construction milestone in the general conditions.
8 That was derived actually in part from the use of
9 priority reserve credits, which --

10 PRESIDING MEMBER PERNELL: Go ahead.

11 MR. ABELSON: Yeah, -- which requires a
12 three-year start of operation. And we had simply
13 back-calculated from that.

14 Applicant made some legal points that we
15 thought had merit. We are still very concerned,
16 and we are sure the Commission is still concerned
17 the projects move ahead as rapidly as possible, so
18 what we've done, and we're pleased to hear that
19 the applicant is in agreement with this, is change
20 that milestone from start of construction to
21 insure milestones adequate to meet the three-year
22 start of operation, that is, in fact, required by
23 the South Coast rules.

24 Apparently that's acceptable to the
25 applicant, so that issue is resolved fully.

1 PRESIDING MEMBER PERNELL: Good. Okay,
2 can we go off --

3 HEARING OFFICER SHEAN: Let's do this.
4 Is there any other matter any party wants to bring
5 to the attention of the Committee before we take a
6 little break here?

7 We'll go off the record then.

8 (Brief recess.)

9 HEARING OFFICER SHEAN: During our break
10 it was pointed out by Mr. Reede that maybe we
11 should go back to alternatives as a discussion
12 topic since all that was addressed really was the
13 alternative cooling proposal by the staff.

14 And there are other alternatives to be
15 discussed. So, do any of the parties who are here
16 want to put on anything with respect to other
17 alternatives?

18 I'll just point out for the record the
19 staff's FSA has covered some; there's some in the
20 applicant's AFC.

21 MR. FLEISCHLI: Yeah, Steve Fleischli
22 with the BayKeeper. I had sort of assumed in our
23 conversation about alternative cooling that we
24 would have more than just the staff's
25 recommendation there to talk about, particularly

1 in regard to feasibility of restoring this
2 environment. And that would include not just
3 staff's proposal for treated wastewater, but also
4 dry cooling and the feasibility of using that in
5 the units.

6 So, I'd want to reserve our right on
7 that issue.

8 HEARING OFFICER SHEAN: Fine. Well, the
9 Committee, its Advisors and -- we've tried to be
10 somewhat Solomonesque about this thing. And
11 have -- we're going to move off the hearing dates
12 that we had tentatively reserved, but not by much.

13 So, let me just give you an idea of what
14 we're talking about here, if I can find the piece
15 of paper that I put those on. Here it is.

16 Okay, we're here today on January 7th.
17 What we propose is that all parties file their
18 initial direct testimony on January 22nd.
19 Thereafter, written rebuttal testimony would be on
20 February 10th. And the hearings will be held
21 somewhere on the days of February 18, 19, 20 and
22 21.

23 MR. ABELSON: Say the last one again,
24 I'm sorry.

25 HEARING OFFICER SHEAN: February 18, 19,

1 20 or 21. Some combination of those.

2 We also propose that for the clarity of
3 the record and the administrative economy of the
4 process, and given the number of parties
5 interested in the aquatic biology issue, is that
6 the Committee will designate sides for this issue,
7 and that on the -- we will have on the first day
8 of evidentiary hearings the testimony on potential
9 impacts, mitigation and cooling alternatives.

10 The applicant's side will have their
11 direct testimony. And there will be an
12 opportunity for cross-examination of the
13 applicant's witnesses by the opposing side.

14 Similarly, on that date we will have the
15 opposing side, if you will, which I think we've
16 characterized here as the staff side, presenting
17 direct testimony showing that there are
18 significant impacts and there are feasible
19 alternatives.

20 And that day there will be cross-
21 examination by the opposing side, which under
22 these circumstances, is the applicant's side.

23 What we propose to do is to allow, and
24 let me indicate, too, we are going to have a
25 subsequent day, not the immediately following day,

1 for the presentation of rebuttal testimony.

2 Now, I guess we're in a situation here
3 where initially the thought was that we would have
4 written direct testimony and oral rebuttal.
5 Because from a certain perspective that's more
6 dynamic. However, and I guess we'd throw this out
7 for comment, we can leave the rebuttal testimony
8 oral if the parties wish it. And so if you have a
9 reaction to that, we could do that.

10 Because fundamentally what will happen
11 is if we have written rebuttal most of the initial
12 direct just kind of goes away, and it's the
13 rebuttal that is the focus of the testimony and
14 the examination.

15 MR. ABELSON: Well, let me --

16 HEARING OFFICER SHEAN: Any comments?

17 MR. ABELSON: -- let me start out by
18 saying that I think that the schedule the
19 Committee is proposing is going to put staff under
20 a significant amount of stress, but nevertheless
21 it does address, in the way it's laid out as a
22 basic schedule, at least the concept that we are
23 very much in favor of, which is to get the record
24 what we call trued-up and cleared before we get to
25 the hearings.

1 So I want to say ouch and thank you at
2 the same time, if I can.

3 With regard to the actual hearings,
4 themselves, not the date of them, but the
5 structure that you're thinking about, I think from
6 staff's perspective, the idea of reserving two
7 days for biology, again I believe is a bit tight,
8 but probably will afford an opportunity for all
9 the information or most of the information the
10 Committee will probably want to hear, especially
11 if the written material is useful, which is our
12 hope on both sides.

13 What I would like to urge the Committee
14 to think about, if you're going to allow two days
15 for the topic, and clearly it is one of the main,
16 if not the main issue in this case and at this
17 juncture, is to afford the parties some discretion
18 as to how they might use a chunk of time over
19 those two days. Whether they want to focus more
20 effort on cross-examination of an opposing party;
21 whether they want to focus more energy on direct
22 presentation of their own case; whether they
23 wanted to focus more of their time on rebuttal.

24 And that we would know that obviously
25 the sequence would be direct and cross-examination

1 and rebuttal, but the actual allocation, the
2 parties would be given a certain chunk of time and
3 they can use that however they chose.

4 Maybe that's the --

5 HEARING OFFICER SHEAN: Well, in fact,
6 that's sort of how this works out, because we had
7 based, as we were looking at it, we were sort of
8 looking at on the order of four and a half to five
9 hours per side, for the total evidentiary hearing.

10 And that the parties, themselves, could
11 apportion this as you wish. Understanding, of
12 course, that if you use pre-prepared written
13 testimony and you assume that the other party's
14 reading it and the Committee is reading it, the
15 amount of time you would have to spend on direct
16 testimony may vary a lot. But if you accept the
17 fact the Committee's already read it, you have a
18 trier of fact who is paying attention and knows
19 what you would present. So, if you're going to
20 ask the witness to re-read it or read it or some
21 other thing like that, that's going to be totally
22 duplicative, and perhaps not very productive.

23 So, I guess what we were thinking is
24 maybe we can do that. Then the question is
25 whether those two should be -- that that time

1 should basically be all contiguous and without
2 interruption. If we're going to have experts from
3 other areas who are having to come in, maybe it
4 should be a continuous matter as opposed to
5 separate by a couple of days because you won't
6 need preparation time for rebuttal testimony.

7 But, anyway, that's the concept, by
8 side, a big chunk of time allocated within the
9 side as they choose.

10 Now I guess one of the Committee's
11 concerns is that given the staff's interest in
12 this topic, is that if other parties, and there
13 will be other parties who are allied and in your
14 side, is that the staff position not so dominate
15 the time that other intervenors, cities or
16 jurisdictions don't feel that they've had an
17 opportunity to participate in it.

18 So, that's something that the Committee
19 is mindful of, as a potential. And we're going to
20 have to ask the feedback from the other
21 intervening parties to make sure that they have a
22 sense that they're being afforded, within the
23 side, a meaningful opportunity to participate.

24 MR. PERKINS: Question about --

25 HEARING OFFICER SHEAN: Sure.

1 MR. PERKINS: -- about written
2 testimony. First -- actually a couple -- first is
3 what kind of formalities do you require on that
4 one?

5 HEARING OFFICER SHEAN: Typed. So that
6 it can be read. That's about it.

7 MR. PERKINS: Okay.

8 HEARING OFFICER SHEAN: We don't care
9 about question-and-answer, anything else like
10 that. If you just want to go blah, blah, blah,
11 blah, blah in a narrative, that's fine.

12 MR. PERKINS: And second, you said
13 initial direct testimony. Is the intent that no
14 one will be allowed to testify, other than on
15 rebuttal, beyond what they put in their initial
16 statement or, I mean, --

17 HEARING OFFICER SHEAN: Well, --

18 MR. PERKINS: -- you know, you say
19 something and then you, oh, I'd like to say
20 something else.

21 HEARING OFFICER SHEAN: I have to tell
22 you, that's one of the reasons I generally don't
23 like written rebuttal. But in administrative
24 procedures you get it, all right.

25 MR. PERKINS: I'm just saying if you

1 type up your narrative and what you want to say,
2 and, you know, the day of the hearing you hear
3 something and it may not be rebuttal, but I ought
4 to say something about that, because I know
5 whatever I know. I know when the traffic jams up
6 on Vista del Mar or something like that.

7 Are you foreclosed from putting on a
8 live witness to put on more information? Or is it
9 just time constraints, or what's the deal?

10 HEARING OFFICER SHEAN: I would say
11 within -- we'll add a little bit to the boundary
12 of direct, but you can't go off way far. So if
13 it's an enhancement, as opposed to something new
14 and different, I think is the best rule there.

15 MR. ABELSON: The only other comment I
16 have, and I'm sure you folks probably thought
17 about this in your colloquy before making this
18 particular suggestion on the schedule. It has
19 occurred to us, to staff, in the aftermath of
20 filing our prehearing conference statement, that
21 there are many issues, in fact perhaps most issues
22 in this case, that are no longer contested and
23 only need what we're calling the narrative or
24 true-up or something very close to it to move on.

25 And I guess the only question I would

1 pose to the Committee, to the Hearing Officer, is
2 whether we could go back to the schedule that
3 staff initially proposed, but with a qualifier.

4 And that qualifier is that basically we
5 would do the noncontested matters as originally
6 scheduled by the Committee. Namely the week of
7 the 27th or whatever it is.

8 Now, this has not been shop surfaced or
9 discussed in any way with any of the other parties
10 and whether they would feel that that was helpful
11 or not, I don't know. But what I'm offering it as
12 is as a way to insure that we get as full and
13 robust a time as possible on the issues that are
14 still pretty contentious in the case, while
15 allowing you folks to go ahead and, you know, move
16 on with certain things you may want or be able to
17 do if we were to bifurcate.

18 I would simply -- I don't know whether
19 when you offered this on the table whether this
20 was this is our ruling, or whether you wanted a
21 discussion of it. But that would be one other way
22 of looking at it.

23 HEARING OFFICER SHEAN: Okay. I guess
24 the only thing we wanted to put on the table is
25 whether the parties would prefer written rebuttal

1 or oral rebuttal.

2 And if you want to address that --

3 MR. ABELSON: Well, from my perspective
4 the February 10th response date, I mean I really
5 believe that the parties are served and the
6 Committee is served, as well, if we all have as
7 clear an understanding, including the applicant,
8 of what our concerns are with regard to issues we
9 disagree. So, --

10 HEARING OFFICER SHEAN: Now, are you
11 saying written or oral?

12 MR. ABELSON: So, what I'm --

13 HEARING OFFICER SHEAN: That's all we
14 need.

15 MR. ABELSON: -- what I'm saying is that
16 your original proposal of direct testimony filed
17 on the 22nd of January, and written rebuttal --
18 excuse me one second -- written rebuttal on
19 February 10th. And then hearings which would
20 include an oral component to the extent parties
21 chose to use it, is what we would favor.

22 HEARING OFFICER SHEAN: Okay.

23 MR. FLEISCHLI: You know, I respect the
24 fact that you only want us to answer that one
25 issue, but I want to say ouch and thank you at the

1 same time, but I want to emphasize the ouch a
2 little bit more.

3 You know, it might not be a big deal of
4 January 22nd for the entities that can simply cite
5 all the materials that they've already put
6 together. My big concern is Dr. Ambrose. We
7 don't yet know from staff counsel whether or not
8 he's conflicted or not, so we don't know whether
9 or not he can even start working for us on this
10 today.

11 And so for him to have two weeks from
12 whenever, it's still very tight. But we don't
13 even have that certainty right now. So that's a
14 serious concern I have on our ability to respond.

15 With regard to the meaningful
16 opportunity, you know, I would think that we could
17 work out something with staff counsel in terms of
18 how that time on the side is broken up. I would
19 think we would need at least an hour for direct
20 and for cross-examination. And if we can work
21 that out with staff, then I don't have a problem
22 with having sides on the issue.

23 But I would really support what staff
24 counsel just suggested with the bifurcation of the
25 issues. We might get that extra week which might

1 not seem like much, but it's a lot to us in terms
2 of our ability to prepare on the contested issues.
3 Because we don't, you know, we don't really have
4 anything on the uncontested issues. They're not
5 our issue.

6 HEARING OFFICER SHEAN: We have
7 Committee availability issues, serious issues
8 through the end of February and thereafter. And
9 that's --

10 MR. ABELSON: Well, we'll withdraw that.
11 I mean we can live with the schedule if that's
12 what the final decision is.

13 HEARING OFFICER SHEAN: And I guess I
14 would hope that -- and I know you understand,
15 you've gotten onto a moving train and we're trying
16 to make sure that, you know, you can just step
17 aboard. And for the things that have been sort of
18 already covered by staff, you know, you know that
19 it might be cumulative.

20 MR. FLEISCHLI: Sure.

21 HEARING OFFICER SHEAN: And so you can
22 leave that aside.

23 MR. FLEISCHLI: Absolutely.

24 HEARING OFFICER SHEAN: And then you can
25 focus on those things and say well, look, staff

1 went a half a mile and I want to go a mile on this
2 issue, or some other thing like that. And that
3 that allows you to focus on those things that
4 either are additive or unique with respect to the
5 BayKeeper, that you want to make sure get into the
6 record.

7 MR. FLEISCHLI: Certainly. And with
8 regard to our written testimony, then, if we are
9 simply referencing some of the studies, maybe the
10 same reports that maybe Dr. Gold or Dr. Ambrose
11 have as much or if not more knowledge on some of
12 those issues, we can just reference them. And
13 then they can provide that testimony at the
14 hearing? If it's coming from something that staff
15 has already cited.

16 HEARING OFFICER SHEAN: Yes, I would say
17 so. I mean you're going to have some foundational
18 issues to deal with, but on the whole, you know, I
19 think the Committee -- it's certainly my belief,
20 and -- that this is not a civil trial or
21 adjudicating private rights. This is a public
22 expositional process.

23 And so I think, in a general sense, my
24 answer to you is yes.

25 MR. FLEISCHLI: Okay. And on your core

1 question of the oral versus written rebuttal, we
2 would -- are you asking with regard to February
3 10th, whether that should be written or not? Or
4 whether we should dispose of that? Or whether on
5 the second day --

6 HEARING OFFICER SHEAN: Whether we pass
7 on written rebuttal and go to the hearings from
8 the initial testimony or not.

9 If your trial lawyer blood is getting
10 up, yeah, you might want to -- if it's not, why --

11 MR. FLEISCHLI: I'd rather have the
12 written.

13 HEARING OFFICER SHEAN: All right.

14 MR. MCKINSEY: We're fine with the
15 schedule as you proposed today with written.

16 HEARING OFFICER SHEAN: Okay, all right.

17 MR. MCKINSEY: I feel like I'm asking
18 for original or extra-crispy, but --

19 (Laughter.)

20 HEARING OFFICER SHEAN: All right.
21 We've gone through this. What we're going to do
22 then is do this by a time chunk for biology and
23 sides. And we'll have them on consecutive days,
24 so that if there are problems with experts who
25 come in from out of town, we can address that by

1 not putting them out too far apart.

2 We think we've got it on air quality.
3 We'll ask the Air District to be here. And we
4 have the parties enumerated for that.

5 Also visual and noise, we're going to
6 particularly reserve some post work hour time to
7 make ourselves and the process available to the
8 public.

9 And then we've substantially narrowed
10 down the other issues. And with respect to the
11 uncontested topics, I expect we're going to
12 basically be able to blurt through those in terms
13 of accepting by declaration the testimony of a
14 whole host of people.

15 And I would just suggest that what we
16 do, what the parties do, is indicate what the
17 topics are, who the witnesses are, where their
18 r, sum, s or qualifications can be found, if they've
19 been filed in the FSA or up here, otherwise in the
20 AFC or any other documentation.

21 And that, in and of itself, the
22 uncontested matters should probably take no more
23 than 15 minutes to a half hour.

24 MR. PERKINS: You want that support
25 statement, that is telling you who they are and

1 where you can find it, that that take place in
2 writing before the hearing, or you want that to
3 take place during the hearing?

4 HEARING OFFICER SHEAN: It should be a
5 list of people who, because as far as the -- let
6 me say that should appear in the initial --

7 MR. REEDE: Filing of January 22nd.

8 HEARING OFFICER SHEAN: -- filing of
9 January 22nd on the -- And I think it's pretty
10 clear, if you look through the FSA, I'm not sure
11 what the applicant's documentation of that is, but
12 the uncontested stuff should go very fast.

13 MR. CABE: Mr. Shean.

14 HEARING OFFICER SHEAN: Yes.

15 MR. CABE: Will you be putting out an
16 agenda with not only the first and second days
17 outlined, but also the individual times that
18 you've been allocating through the conversations
19 we've had this morning?

20 HEARING OFFICER SHEAN: What we have,
21 and this is going to have to be modified a little
22 bit because we're trying to run a couple of
23 different scenarios, in draft form is we will
24 march through each day with the hours that we will
25 be conducting the hearings and some sort of

1 division with respect to that.

2 And if there is within that another
3 division of time, we'll give that. So, we're
4 trying to make sure that everyone, for example,
5 understands between the day that might begin at --
6 or a particular session that might begin at let's
7 say 3:00 and run till 5:00, what the topics are
8 and if there need to be any time guidelines per
9 topic.

10 MR. CABE: Okay.

11 HEARING OFFICER SHEAN: So I think we're
12 going to try to spell that out.

13 MR. CABE: And the time of day that it
14 would be starting?

15 HEARING OFFICER SHEAN: Exactly. When -
16 -

17 MR. CABE: Okay. What would that be
18 typically, 8:00?

19 HEARING OFFICER SHEAN: -- when we'll
20 take a lunch break. I think we're going to try to
21 do this perhaps beginning at 9:00, but certainly
22 no later than 10:00. And generally running to
23 5:00 and not later than 6:00.

24 MR. McKINSEY: Are we anticipating using
25 this facility?

1 HEARING OFFICER SHEAN: Except for the
2 evening thing. Pardon me?

3 MR. MCKINSEY: Are we anticipating using
4 this facility?

5 HEARING OFFICER SHEAN: Well, the
6 availability of this place is a little sketchy, so
7 we have found that we've run into issues about
8 morning starts and that we're getting later and
9 later. So we'll have to -- I don't know that
10 that's -- that this is where we're going to be.

11 MR. CABE: City Hall is no longer
12 available, apparently?

13 HEARING OFFICER SHEAN: Apparently not.
14 So, we'll try to find --

15 MR. REEDE: They're renovating.

16 HEARING OFFICER SHEAN: -- try to find
17 something. And we'll get this order out once we
18 get Commissioners' schedules coordinated for the
19 evidentiary hearing dates.

20 MR. FLEISCHLI: Do you normally have
21 audiovisual equipment or anything if we want to
22 put on something in cross-examination, an exhibit
23 or something like that, that we can put up. Or
24 should we blow those up? Or --

25 HEARING OFFICER SHEAN: You mean like an

1 overhead or something like that?

2 MR. FLEISCHLI: Yeah, yeah.

3 HEARING OFFICER SHEAN: Typically,
4 probably -- it just depends upon the site of the
5 hearing. Sometimes it's already there. We do not
6 haul it down from Sacramento.

7 So, I think that's --

8 MR. FLEISCHLI: If we need that sort of
9 thing who should we coordinate with?

10 MR. CABE: Bring it.

11 HEARING OFFICER SHEAN: Yeah, I would
12 say try to bring it, or just blow it up and give
13 copies around. Or you don't even have to blow it
14 up, but just make sure that there are an adequate
15 number of copies for people to refer from.

16 Are there any questions or any further
17 information or direction we can give you? We'll
18 try to get this out, as I say, as soon as we know
19 the availability of the Commissioners for these
20 dates.

21 And if there's no further comment we're
22 prepared to adjourn, after thanking you all for a
23 lot of hard work.

24 PRESIDING MEMBER PERNELL: Before we
25 adjourn let me just say that appreciate everybody

1 being here.

2 We will try and insure that we have
3 adequate phone hook-up, as well as mikes. And if
4 you need additional equipment, as has been
5 discussed, we would suggest that after you find
6 out, after Mr. Shean secures a site, we will have
7 a better idea of what you need to bring if you
8 have some overheads or whatever.

9 Good, so if there's no further business
10 to come before this Committee, this Committee is
11 adjourned.

12 Thank you.

13 (Whereupon, at 1:40 p.m., the hearing
14 was adjourned.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
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was thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
conference, nor in any way interested in outcome
of said conference.

IN WITNESS WHEREOF, I have hereunto set
my hand this 17th day of January, 2003.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345